TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1905.

No. 359.

THE UNITED STATES, APPELLANT,

vs.

WILLIAM A. CLARK.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

VOL. IX OF TESTIMONY (PAGES 4225 TO 4752, INCLUSIVE).

FILED JULY 25, 1905.

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No. 1070

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT.

TRANSCRIPT OF RECORD.

THE UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM A. CLARK,
Appellee.

TESTIMONY.

VOL. IX

Pages 4225 to 4752, inclusive.

Upon Appeal from the United States Circuit Court for the District of Montana.

The Filmer Brothers Co. Print, 424 Sansome St., S. F.

(Testimony of William M. Draffen.)

Mr. BICKFORD.—A certain length of time was given the complainant to put his testimony in in chief, and that time has long since expired, and other times that were given to the complainant by stipulation with counsel. It is only fair to counsel for the defendant to state this. I believe the order of the Court referring to this matter also contained a reference to the length of time that the complainant should have to introduce his testimony in rebuttal. Not only is counsel at this time trespassing upon the time that has been given to the defendant to put in his testimony, but he is asking us to assume the responsibility of having this time taken away from us, and credit it to him, if as a matter of fact he is right in the matter of the order of the Court to put in rebuttal testimony. I say it is unfair to the defendant in the case, not only because he is going outside of the lines of legitimate cross-examination, but for the other reasons which I have mentioned. This witness could be called by the Government notwithstanding the fact that it has refused to give us access to the correspondence which we have asked for in this case, and could be heard upon the time which was allotted by the Court to the Government for the presentation of rebuttal testimony. At this time it is unfair to us to consume the time allotted to the defendant for the presentation of its case by such a course of cross-examination as is not under the rules of law admissible, and therefore we want this protest to go on record.

Mr. MAYNARD.—Let it appear of record that the

(Testimony of William M. Draffen.)

Government stipulates that the defendant may have twice the length of time in addition to the amount given under the stipulation consumed by the Government in the cross-examination of Mr. Draffin, and second, I desire to have it appear on the record that as far as the refusal to produce the correspondence called for by the defendant is concerned, it was not personal to myself, but I was acting strictly under orders from the department at Washington, and the ground of the objection was not that they cared anything about the contents of the correspondence, but simply because they were unwilling to form a precedent which might embarrass them in future, that they conceded that there was no legal foundation for the request, and that if they gratuitously and benevolently furnished this correspondence, it might embarrass them hereafter and might be cited in other jurisdictions as a precedent which they are not willing to have established. As far as I am personally concerned, I, simply as a private soldier acted under the command of my superior officer.

The EXAMINER.—Now, Mr. Reporter, if there is any question you can read it.

The REPORTER.—There is no question.

The EXAMINER.—Then go on with your statement, Mr. Draffin?

The WITNESS.—Colonel Marshall and I agreed to meet at his office. I won't be positive that it was Col-

(Testimony of William M. Draffen.)

onel Marshall that first said that a settlement was brewing, but it may be that Mr. Griswold first suggested it to me, and then Colonel Marshall and myself discussed it. At any rate, after respective counsel had discussed the matter of settlement, it was stated that one of the conditions would be an affidavit on the part of Mr. Griswold, and Mr. Griswold brought me an affidavit to my office that had been prepared by someone, and Mr. Duncan and myself read it over and I suggested that in my judgment if he signed such an affidavit as that, it would put him beyond the pale, in the penitentiary, and properly so. Mr. Griswold then asked what kind of affidavit I would suggest, and I told him I had no affidavit to suggest, and proceeded to take my pen and emasculate it, most of it. He took it away, and the next affidavit that I saw was when we all met, Colonel Marshall, Mr. Stiff, Mr. Cobban, Mr. Howell, Major Duncan, Griswold and myself, at Colonel Marshall's office. Mr. Griswold had an affidavit and I read it over and so did Duncan, and it was submitted to Griswold and he read it, and this was in the presence of all the parties. Under ordinary circumstances I would claim the privilege, of course, but in view of what had been stated in the press, I think it is only fair to me that I should be able to state this, that Griswold then read it again and asked me what I thought of it, and I said, "You know the facts, and I would not sign anything that was not true." Mr. Griswold then said that there was no fact that he had stated that he was not true,

(Testimony of William M. Draffen.)

and he still maintained that they were true, but that this affidavit was a conclusion, as he termed it, and that he had stated in the testimony what transactions he had had with Mr. Cobban and what transactions Mr. Cobban had had, and as to the legal effect of it he did not know, and he would sign the affidavit. Mr. Griswold did not sign the affidavit at Major Duncan's suggestion or mine, and the only thing that was said was simply, "you know the facts," and that was in the presence of all the parties in the office as I now recall, and upon that I cannot be mistaken. The case of Griswold against Cobban was settled satisfactorily to all parties, I take it, at that time, and from then on I had no connection with the matter any further. What was said about any correspondence has no connection and had no connection with the case of the Government against Senator Clark, because I did not know then and do not know now that Senator Clark ever had any connection with the matters, nor personally, do I know that Mr. Cobban had any connection except under the contract that was then presented. My letter to Mr. Zevely had no connection with the case of Griswold against Cobban, nor especially with reference to Mr. Cobban himself, but it was based on the contract that was introduced in evidence and the one of which the substance was mentioned in the pleadings, that I filed in court. I had no connection to the matter in any way, and do not know anything about it personally, and my connection with the suit of Griswold against Cobban was just like any

(Testimony of William M. Draffen.)

other suit that I should have; it was based upon an accounting and upon a contract, and we filed the suit and we were there to try it.

Q. How much was paid by Mr. Cobban?

Mr. WALSH.—That, I suppose, is proper cross-examination, too. We object to this as not proper cross-examination.

A. I cannot answer that question, Mr. Maynard, for the reason that it was understood between counsel and client at the time of the settlement that nothing should be said with reference to the amount. I feel that that is privileged, and I have never stated what it was, nor will I until I am compelled to, but I feel that if I should state it that I would be violating an obligation that I took with my brother lawyers and in the presence of the respective clients.

Mr. MAYNARD.—I show the witness Defendant's Exhibit "E."

Mr. BICKFORD.—To which we offer the same objection heretofore urged, that it is not proper cross-examination.

A. This affidavit in my judgment—

Mr. BICKFORD.—The same objection to the statement of the witness that we have heretofore urged, that it is not proper cross-examination.

The WITNESS (Answering). —is the one there signed by Mr. Griswold at the time that I have just stated.

(Testimony of William M. Draffen.)

Q. Do you know whose handwriting that is in?

Mr. BICKFORD.—Same objection.

A. I am not sufficiently familiar with Mr. Griswold's handwriting to state. I am acquainted with Mr. Stiff's handwriting, and I would say that that is his signature there.

Q. I know, but I mean the body of the affidavit, whose handwriting is this, if you know?

A. I do not know. Upon reflection, it seems to me that Mr. Griswold came to my office and said that Mr. Howell, who then represented Mr. Cobban, would write another affidavit or submit another affidavit for his inspection, and asked me to go over there to Mr. Howell's office, and my recollection is that I went over there, and Mr. Howell wrote that affidavit. I won't be positive as to that, but that is my impression; I am not acquainted with that handwriting, but I think that I was there while Mr. Howell prepared it and submitted it, and in a few moments they all went to Colonel Marshall's office with the result that I have stated.

Q. And you think that you were present in Mr. Howell's office when this exhibit was written by Mr. Howell?

A. That is my recollection.

Q. Was this in the same handwriting as the affidavit which was submitted to you and which you emasculated with your pen?

A. Now, as to that I won't say, but my recollection is that Mr. Howell prepared both of them; that is, just from talking with him that is my recollection.

(Testimony of William M. Draffen.)

Q. How long were these negotiations for settlement pending?

Mr. BICKFORD.—The same objection, not proper cross-examination.

A. Oh, I think possibly a day or a day and a half. It may be that it was first suggested one day by some of the parties, and the next day the settlement was consummated.

Q. Who suggested this settlement?

Mr. BICKFORD.—Objected to.

A. Well, all I can say as to that—I think Mr. Griswold came to me—

Mr. BICKFORD.—The objection to this is that the witness has already testified to the fact concerning which he is now interrogated, and that it is not proper cross-examination.

The WITNESS (Continuing.)—I think Mr. Griswold first came to me and said that there was a settlement brewing, and that a friend of his, Mr. Sparks, was negotiating it. That is my recollection.

Q. Did Mr. Griswold tell you that Mr. Sparks had come to him and said that Mr. Cobban wanted to see him?

Mr. BICKFORD.—We object to any conversations between the parties.

Q. (Continuing.) In regard to the settlement?

Mr. BICKFORD (Continuing objection).—Because it

(Testimony of William M. Draffen.)

is hearsay, immaterial and irrelevant, and not cross-examination and also leading.

A. I cannot say as to that as to Mr. Cobban wanting to see him. I know Mr. Griswold said Mr. Sparks was a friend and negotiating or trying to negotiate a settlement or something of that kind.

Q. The plaintiff had put in its testimony in the case, had it not, before the referee at this time?

A. Yes, sir.

Q. And the defendant had the case?

Mr. BICKFORD.—The same objection.

A. Yes, that is true.

Q. Had there been, up to the time when these negotiations did commence—at the point that you had arrived at, had Mr. Griswold, to your knowledge, or had you as his representative, made any proposal of settlement? A. None that I know of.

Mr. BICKFORD.—The same objection.

Q. This being negotiations there for a settlement came to you somewhat as a surprise?

Mr. BICKFORD.—The same objection and also that it is leading.

A. Well, yes, sir, it did. I wanted to try the case. I felt like from the contract and proof, I thought maybe that we could show that. Mr. Griswold had performed these services, and if so, under the contract he was entitled to his pay. That was all, and I thought that he could recover the amount.

(Testimony of William M. Draffen.)

Q. You thought you could recover $2,800, didn't you, allowing for all the credit that Mr. Cobban might have at all.

Mr. BICKFORD.—Same objection.

A. Well, I cannot state the amount. I forget now the amount that was sued for; I forget that but I felt like that—

Mr. BICKFORD.—We object to the witness describing his feelings to the Court on the ground that they are irrelevant and immaterial either to the Court or to the counsel on the other side either, or to any question that is in controversy in this action, and further that it is not proper cross-examination.

Q. You say, Mr. Draffin, that they required as one of the terms of the settlement that this affidavit should be made.

Mr. BICKFORD.—Objected to as leading and as irrelevant and immaterial, also as not proper cross-examination.

A. That is my recollection.

Q. Now then, what was the second condition that they required?

Mr. BICKFORD.—The same objection.

Q. (Continued.) About the contract itself, the surrender of it?

Mr. BICKFORD.—The same objection, and also that it is leading.

A. I believe that it was asked that they turn over

(Testimony of William M. Draffen.)

the exhibits, and I stated that that was proper when the case was settled and we should do so. That is, the exhibits could be withdrawn, and they could have them. It was asked, and the order was made in court.

Whereupon a recess was taken until 2 P. M.

Friday, April 18th, 1902, two o'clock P. M.

Hearing resumed, cross-examination of witness, WILLIAM M. DRAFFEN, resumed by Mr. Maynard.

Q. Mr. Draffen, you named one condition just before recess, namely, the making of the affidavit by Mr. Griswold, as a condition precedent to the—or rather, one of the things that they asked to have done, before the suit was stipulated out of court, and the second was the delivery up of the original contract that had been made between Mr. Cobban and Mr. Griswold, and the itemized statement which had been made. And further, a stipulation to be filed in the office of the clerk and recorder; and fourth, the withdrawal, or the obtaining of the affidavit which Mr. Griswold had given before Mr. Inspector Zevely. What have you to say as to the fourth condition?

By Mr. WALSH.—I haven't heard Mr. Draffen say one-half of that, and none of it in that way.

By Mr. MAYNARD.—Well, that is my understanding of it.

By Mr. WALSH.—Do you desire to recite that he did state those things?

(Testimony of William M. Draffen.)

By the WITNESS.—No, I haven't done all of those; I haven't stated all of those.

Q. Which ones didn't you name?

A. I will state this: My recollection at the time of the stipulation was that one of the conditions was that Mr. Griswold should make an affidavit along the lines suggested, and he did make the affidavit which I referred to in my testimony heretofore.

Q. That is one.

A. Another was that the contracts that were introduced in evidence as exhibits, and all the exhibits. I don't know that the contract especially was referred to, but all of the exhibits were to be turned over to the defendant.

Q. That is two.

A. That was agreed to.

Q. Now, the third, with reference to the stipulation that was filed?

A. Well, what stipulation? I don't just recall what that stipulation was.

Q. Well, wasn't there a stipulation filed at the time of the discontinuance of the suit, in which it was recited that the agreement had been made and given force to, which, with these papers and exhibits should then be withdrawn from the files?

By Mr. BICKFORD.—We object to this for the reason that the stipulation itself is the best evidence of the contents thereof; and further, that it is not proper cross-examination.

(Testimony of William M. Draffen.)

A. I believe that is true.

Q. Yes, sir.

A. I believe that is entered of record in the action.

Q. That is three of the conditions that you have named. Now the fourth one was what? What was said about obtaining possession of the affidavit that Mr. Griswold had made before Mr. Inspector Zevely?

A. Well, my memory has been refreshed as to that matter, and I remember at the time of the making of the stipulation Colonel Marshall and myself discussed the question, and in the mean time, what took place before Mr. Zevely, didn't have anything to do with it; and I don't think it was material, but rather was immaterial and the Colonel said that as far as Mr. Griswold was concerned in the matter, and to show good faith, he thought that they should turn that over and enlighten Mr. Cobban as to what he had said, and what position he had taken. Colonel Marshall and myself discussed the matter there in the office in the presence of them, some little time, and, as I said, I don't know that it made any difference.

By Mr. BICKFORD.—We will interpose an objection to the witness reciting the conversation between Colonel Marshall and himself, upon the ground that it is irrelevant and immaterial what transaction took place there, that is, relative to the conversation that occurred, for the reason that it does not prove or tend to prove any of the issues raised in this case.

(Testimony of William M. Draffen.)

A. (Witness continuing.) This was in the presence of my client, and I am not referring to any matters that are not satisfactory to Mr. Griswold. Mr. Marshall wanted to get the affidavit that Mr. Griswold had made before Mr. Zevely, but of course, Mr. Griswold had to refuse to give that up.

Q. Refused to let them have it?

A. Yes, sir, that is the one the Government had possession of.

Q. Refused to give them what?

A. This affidavit.

Q. That he had made before Mr. Zevely?

A. Yes; my recollection is that he refused to give that up.

Q. Refused to?

A. Yes, I think so; that is my judgment about it.

Q. On the ground, was it not, that it was in the hands of the United States Government representatives, and you had no further control over it?

By Mr. WALSH.—We object to that upon the ground that it is leading.

A. Yes, sir, I am positive as to that now, I am positive as to that.

Q. So that the three conditions which I have named, which it was in your power to comply with to bring about a settlement of the suit, you were willing to do that which was in your power, but that which was beyond your power, you refused to do?

(Testimony of William M. Draffen.)

A. That is true.

Q. Now, in the prospective settlement which was to be made, your client, Mr. Griswold, without calling specifically the exact amount of money he was to receive, he was to get a large sum of money, was he not, comparatively?

By Mr. WALSH.—We object to that upon the ground that it is leading.

Q. —in case a settlement should be made?

By Mr. WALSH.—We object to the question upon the ground that it is leading.

A. General Maynard, I was present at that settlement, and it was agreed there that as far as the settlement was concerned, that the public should not know anything about it. I agreed to it. I care not what others may do, or what others may say, I will not state the nature and character of the settlement. They may have their own views, and I have mine.

Q. Well, I am not asking for the exact amount, but in case a settlement was made, it would be for the benefit of your client, would it not?

A. It certainly was, or I suppose he would not have settled.

Q. Very well, that is all I care about. And the settlement so resulting to the benefit of your client was the result of the negotiations and a compliance with these conditions?

By Mr. WALSH.—We object to that upon the ground

(Testimony of William M. Draffen.)

that it is irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. It was the result of the negotiations.

Q. Now, how long before this settlement was had with Mr. Special Inspector Zevely, of the Interior Departemnt, was it that he was in Missoula taking testimony concerning matters in which Mr. Cobban was one of the parties?

A. I cannot say with any degree of accuracy; it was some little time before. I don't recall now just when Mr. Zevely first arrived in Missoula, but it was some time before.

Q. It was some time before, was it?

A. Yes, and if I could take the time to ascertain as to the date of the suit and all, I might be able to tell almost within a week or two.

Q. Then, as a matter of fact, it was sometime before this? A. Yes, I have so stated.

Q. But in the same spring? A. Yes, sir.

Q. At the time the negotiations were going on in this matter, and which resulted in this settlement, a Grand Jury of the United States was then in session in the United States Court in the neighboring city of Helena, was it not?

By Mr. WALSH.—We now call upon counsel for the Government to show how that is proper cross-examination upon the matter as to the communications between himself and Mr. Zevely. We do not see how it is possible that this can be proper cross-examination under the circumstances.

(Testimony of William A. Draffen.)

Q. Answer the question, Mr. Draffen.

By Mr. WALSH.—If the counsel declines to answer as he does, we shall, then, object to the question upon the ground that it is leading, and that it is not proper cross-examination; and upon the further ground that it is utterly incompetent, irrelevant and immaterial to any of the issues in this case.

Q. Answer the question, please, Mr. Draffen?

A. I don't know just what time the Grand Jury met in Helena, but it is my impression now that such was the case.

Q. That it was then in session?

A. At the time Mr. Zevely was in Missoula?

Q. No, sir, at the time that these negotiations were pending, and at the time that suit of Griswold against Cobban was settled.

By Mr. WALSH.—We object to the question upon the ground that it is leading, and that it is not proper cross-examination; and further upon the ground that it is utterly incompetent irrelevant and immaterial to any of the issues in this case.

A. Let me see the affidavit, General Maynard.

By the EXAMINER.—You mean this affidavit. (Examiner refers to Exhibit "E.")

By the WITNESS.—If you please, Judge?

By the EXAMINER.—What is the date of it?

By the WITNESS.—The 12th day of June, 1901, I believe it was.

(Testimony of William M. Draffen.)

Q. Well, now, at any time during the pendency of the suit, from the beginning to the end, do you know anything that was said or done by Mr. Griswold in any way which reflected upon him or his honor or his honesty, or his character?

By Mr. BICKFORD.—We object to that upon the ground that it is leading, and for the further reason that it is not proper cross-examination, and is not calling for any fact from the witness, and further, that it is irrelevant, incompetent and immaterial, and does not prove or tend to prove any issue in this case.

A. I do not.

Q. You may state as to whether or not, under the facts and circumstances connected with this affidavit, which was filed, as to whether he did not say a number of times, in the presence of the crowd there, when the question was put to him, and when he made this affidavit, he did not at all times refuse to say anything that was not true, and did not say that he did not want to do anything or say anything that was not the exact truth?

By Mr. WALSH.—We object to that for the reason that it is not proper cross-examination, and as calling for a self-serving declaration on the part of Griswold.

A. Mr. Griswold stated in the presence of Colonel Marshall and Mr. Stiff, and all assembled there, that he would not sign anything that was not the truth.

Q. And asserted that his testimony given on the trial was true?

(Testimony of William M. Draffen.)

By Mr. WALSH.—We object to that upon the ground that it is leading, and further, that it is not proper cross-examination, and it is also irrelevant and immaterial to any of the issues in this case.

By Mr. MAYNARD.—Isn't it proper to ask that question?

By Mr. WALSH.—Do you claim the right to put questions of this character to this witness on this branch of the case?

By Mr. MAYNARD.—Certainly.

By Mr. WALSH.—We object to this line of examination upon the ground that it is leading, and for the further reason that it is not proper cross-examination, and further, that it is irrelevant, incompetent and immaterial, and does not prove or tend to prove any issue in this case.

Q. And that that affidavit, as I understood you before, as to the violation of the law, that that was a question of law, and a conclusion of law, rather than an averment of fact?

By Mr. WALSH.—We object to this, also, upon the ground that it is leading and not proper cross-examination, and further, that it is irrelevant, incompetent and immaterial, and does not prove or tend to prove any issue in this case.

A. He so stated.

Q. In the presence of all of you?

By Mr. WALSH.—We object to the question upon the ground that it is leading and not proper cross-examina-

(Testimony of William M. Draffen.)

tion, and further, that it is irrelevant, incompetent and immaterial, and does not prove or tend to prove any issue in this case.

A. That is my recollection about it.

Q. Now, Mr. Draffen, you have lived in the same town with Mr. Griswold for—ever since you moved to Missoula, for sixteen months last past? A. Yes sir.

Q. And you know of his being in business there, do you not?

A. Yes, sir; Mr. Griswold is now engaged in the mercantile business, as I understand it; in fact, I know that to be true.

Q. You may state as to whether or not you know his general reputation in the neighborhood in which he resides, for truth and veracity?

By Mr. WALSH.—Now, we call upon counsel for the Government, to state upon his professianl honor, whether he calls this proper cross-examination of the witness.

By Mr. MAYNARD.—No, I should say that this was an incidental matter.

By Mr. WALSH.—Then, we object to that for the reason that it is not proper cross-examination.

By Mr. MAYNARD.—I won't press it, then, if you insist upon it now. I will wait until the time comes for rebuttal, but inasmuch as Mr. Draffen was here, I thought it would save time by putting that question to him.

By the WITNESS.—Well, for the purpose of saving a trip, if you will pardon me, I will say that my answer to

(Testimony of William M. Draffen.)

that question would be that it would not be fair to him, and I, therefore, claim the privilege. Mr. Griswold is my client; I met him there, and I know nothing, as far as Mr. Griswold is concerned, since taking charge of this case, and I wouldn't be in a position to state as far as his reputation for truth, honesty and veracity is concerned, except insofar as my dealings with him as a client, and in connection with this case of Griswold against Mr. Cobban, and upon that, I am very positive as to my views, and as to his conduct and his actions in the matter from the inception of it to the end.

Q. What is that?

By Mr. WALSH.—One moment. The question has been asked and has been answered, and there seems to be no relevancy or materiality what his connections were.

By Mr. MAYNARD.—If I thought that you would take that position all the way through, I wouldn't press it now.

Q. I will ask the question again. Is it good or bad?

By Mr. WALSH.—We object to that not being cross-examination.

By Mr. MAYNARD.—Well, the witness has made a statement with reference to it.

By Mr. WALSH.—The fact that it was brought out solely by the voluntary statement of the witness doesn't make any difference.

By Mr. MAYNARD.—On the point itself, I admit that you are right about it, but inasumch as Brother Draffen

(Testimony of William M. Draffen.)

has brought it out, I would like to see whether he has an opinion with reference to it in any way.

By Mr. WALSH.—Well, the fact that he has volunteered something doesn't make it competent at all, or proper cross-examination.

By Mr. MAYNARD.—Well, I will not press the question. If we have an understanding that hereafter you will not take advantage of it.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Draffen, what is the fact as to Mr. Griswold having read this affidavit over before he signed it?

A. He did read it over, Mr. Walsh.

Q. Where did he read it?

A. He read it over in Colonel Marshall's office.

Q. And what did he say about it being true?

A. And he also read it over in our office.

Q. And what did he say about it being true?

A. He said those were the facts, as I understood him. He said, however, that everything he had stated, as far as his testimony was concerned, with reference to Mr. Grisban, was absolutely true.

Q. That is, in the trial of the lawsuit?

A. Yes, and as to whether or not—

Q. Mr. Draffen—

By Mr. MAYNARD.—I insist upon an answer, now, to the question. The witness was broken into by counsel when he was answering.

(Testimony of William M. Draffen.)

By Mr. WALSH.—No, he wasn't broken into.

By the EXAMINER.—You may go ahead and finish your answer.

A. That is, as to whether or not as near as I can remember, Mr. Griswold said that constituted violations of the law; that that would be a matter that would be determined subsequently, or words to that effect.

Q. Mr. Draffen, the question that I addressed to you is as to what Mr. Griswold was referring to, when he said his testimony was correct?

A. In the trial of the lawsuit of Griswold against Cobban.

Q. That is what I mean; that is to say, that any testimony that he gave in that action was true—was correct.

A. That is my recollection, Mr. Walsh.

Q. Now, Mr. Draffen, I call your attention to the concluding portion of this affidavit. "That the instructions of said Cobban to this affiant, while in his employ, were always to the effect that no contract for the purchase of timber and stone claims, should in any case be made prior to making final proof thereon in the United States land office." Do you observe anything in that language, of a conclusion in that statement, or a deduction of law?

A. I do not.

Q. That is a plain statement of fact, is it not?

A. Absolutely, in my judgment.

Q. Now, Mr. Draffen, you were not there, were you, witnessing the execution of this affidavit of your client,

(Testimony of William M. Draffen.)

knowing that any statements he made in the affidavit were false, were you? A. No, sir.

Q. I take it that your presence there outside, if not an express approval of the proceedings, signified that whatever information you had about this matter, the facts were as stated in this affidavit.

A. No, sir.

Q. Well, did you understand that they were different?

A. No, sir; there was a great deal of testimony in that case, and Mr. Griswold, as my client, through the intervention of his friends, as he suggested, were after a settlement of the case, and he concluded to settle. It was my judgment that he should not settle, but to prosecute the case to an end. In that I was overruled by my partner and Mr. Griswold, after consultation, and agreed to settle. And as far as the affidavit is concerned, I now recall that Mr. Griswold said that Mr. Howell had prepared an affidavit and submitted—he either brought it to him for us, or I won't say but what Mr. Howell—I wouldn't be positive that I was in Mr. Howell's office when the affidavit was made. I don't think there will be any controversy about that, though. I stated to Mr. Griswold that under no circumstances should he sign that affidavit. As I stated before, it would send him to the penitentiary if he did. And my recollection is that this one was submitted, and upon the feature as to whether or not Mr. Cobban had violated any law or not, that was the ground upon which Mr. Griswold signed it, as he stated. I didn't interpose

any objection to it, only to consult the wishes of my client, as I always do. If he desired to settle, that was his province and not mine. He had my views and I had his, but as to the concluding portion of the affidavit, it is a fact, in my judgment, and as I stated, that Mr. Griswold was a client of mine, and that he stated it as a fact; and I assume and take occasion at this time to say that it was not my province to use any force, nor do I understand that I was called upon to tell a man that he couldn't do anything—nor do I recall that I paid any particular attention to that portion of the affidavit, if my attention was directly called to it.

Q. Now, Mr. Draffen, you were not there as a witness —that is, you were not there witnessing the execution of this affidavit of your client, knowing that any statements that he made in the affidavit were false?

A. No, sir.

Q. And your presence there, if not an express approval of the proceedings, signified that whatever information you had about this matter, the facts stated in the affidavit were true?

A. I couldn't say, Mr. Walsh, that I had any understanding about the matter at the time; I couldn't say that. I was present, of course, during the trial of the case, and heard the testimony, and I was present at the time that this affidavit was signed. Colonel Marshall was also present.

Q. Colonel Marshall was present during the trial of the case also? A. Yes, sir.

(Testimony of William M. Draffen.)

Q. Now, are you prepared to answer the question, Mr. Draffen? You answered the other question in the negative and I ask you the question again. You may have misunderstood it in the form in which it was. I take it that your presence there, and your express approval of the procedure in the settlement of the case, and the making of this affidavit by Mr. Griswold, signified that your information about the facts was not such as indicated that they were different from what were recited in this affidavit. Is that correct? Or rather, your understanding of the facts—was it contrary to that state of facts recited in the affidavit?

A. Well, do you mean, Mr. Walsh, based upon the testimony in the case?

Q. Any information you had about the matter at all. From what information you had about the case at all, did you understand that that affidavit recited the truth or did you understand that it was false, Mr. Draffen?

A. As far as the testimony in the case was concerned, the latter portion of the affidavit would not be consistent with the testimony.

Q. Now, I wasn't asking you how consistent it was with that part of the testimony, or any other information, Mr. Draffen. I wanted to know from you, whether in view of what you had heard about the matter, I want to know if you understood that that was true or false?

A. No, I did not understand that it was, Mr. Walsh.

(Testimony of William M. Draffen.)

I wasn't there to pass upon the sufficiency or insufficiency of the affidavit.

Q. Well, you were not there witnessing and permitting your client to make an affidavit which was false, and allowing it to be done, without a protest on your part, were you, Mr. Draffen?

By Mr. MAYNARD.—We object to the question upon the ground that it is leading, and an attempt on the part of counsel to criticise his own witness, and resorting to methods that are manifestly improper and incompetent in the examination of an attorney, and as the counsel's own witness.

A. Well, I desire to answer that question, no, sir, and I did protest.

Q. What did you say at that time and in the presence of Colonel Marshall and Mr. Howell, in the way of an admonishment to Mr. Griswold not to sign this affidavit?

A. It was submitted to me, and I told him that I knew the facts.

Q. When did you say that?

A. There in the office.

Q. Did you say anything to—to Mr. Griswold, to the effect that he ought not to sign this affidavit because it wasn't true?

A. No, sir, I did not; I simply stated that he knew the facts.

Q. Now, what testimony do you recall as having been given on the trial of Griswold against Cobban,

(Testimony of William M. Draffen.)

that was inconsistent with this statement made in the affidavit that the instructions of Cobban to this affiant while in his employ were always to the effect that no contract for the purchase of timber and stone claims should in any case be made prior to making final proof in the United States land office?

A. Well, my recollection, Mr. Walsh, is that there was some testimony on the part of the plaintiff, but any particular witness, I don't recall. Possibly, Mr. Griswold himself, testified that the instructions were to make the arrangements.

Q. Well, will you swear there was a word said about it? A. In the testimony.

Q. In the testimony, as to whether Mr. Cobban did or did not give any instructions not to make any contracts prior to final proof at any time?

A. Well, I won't say, Mr. Walsh.

Q. Now, Mr. Draffen, also, I would like to refer to the testimony. Let me inquire of you this. Wasn't the sole question upon that trial as to what number of claims or what particular claims Mr. Griswold had examined, and how much timber there was on them, and how much he was entitled to receive, and how much he had charged?

A. I think so; I think that is true.

Q. In other words, Mr. Draffen, the validity or the invalidity of these various entries were not the subject of inquiry in that case at all?

A. It was not, unquestionably.

(Testimony of William M. Draffen.)

Q. And you don't now recall any specific testimony given on that trial by any witness which was contrary to the statement made in this affidavit that Cobban had always instructed him not to make any contracts for the purchase of timber prior to the making of final proof?

A. Well, I cannot recall any particular witness. I won't say, Mr. Walsh; the testimony isn't fresh in my memory. I wouldn't be positive as to that.

Q. So I take it, Mr. Draffen, that when you speak about this being inconsistent with some testimony given at the trial, that that was spoken hastily by you, and that it referred to something else.

By Mr. MAYNARD.—I move that the question of counsel be stricken out as incompetent.

A. No, sir.

Q. Well, I understand you to say that you didn't remember that any testimony given by any particular witness was to the effect that such instructions had not been given?

A. That is true, but in answer to your question, I am under the impression that there was some testimony in the case to the effect that—whether by Mr. Griswold or by any other witness in the case I cannot say without referring to the testimony—that Mr. Griswold was to go upon this land and to secure the services of some people to go and make proof. That was my impression then, but I cannot recall now any par-

(Testimony of William M. Draffen.)

ticular witness. It was my impression in answer to the question.

Q. That is your impression now?

A. But I won't say that it is absolutely true. The trial of the case was sometime ago, and I wouldn't be positive as to that. It strikes me, though, from the latter portion of that affidavit and my impression is, just now, that that was inconsistent with some of the testimony in that case. Whether my impression is based upon the testimony given I would not be positive.

Q. You didn't say anything about that at the meeting, however, in Colonel Marshall's office?

A. No, sir, I did not.

Q. You didn't admonish Mr. Griswold at that time that that statement was inconsistent with the testimony given by him at the trial?

A. No, I simply told him that he knew the facts.

Q. Now, there were some things in that other affidavit, Mr. Draffen, the first affidavit prepared, as I understand you, that you drew your pencil across and told Mr. Griswold he couldn't sign that without putting himself in a position to go to the penitentiary?

A. That is my impression.

Q. Well, that was to the effect, wasn't it, that he had brought the affidavit for the purposes of blackmail?

A. No, I don't recall that.

Q. Don't you recall that that was in the affidavit?

A. I won't recall any specific words, but my recol-

(Testimony of William M. Draffen.)

lection is that some portion of it was that he had testified falsely, or words to that effect.

Q. Well, that was the substantial and material difference between that affidavit and this, was it not?

A. Well, I—

Q. At least you don't recall any other substantial difference between the two?

A. I do not without having the other affidavit before me.

Q. But you remember there was some such statement as that in the other affidavit?

A. Yes, sir.

Q. Did you say that you were connected with the Government in any way, Mr. Draffen?

A. That I am?

Q. That you were? A. When?

Q. I understood in the course of your examination that you said you had been connected with the Government?

A. Yes, sir, but not since coming to this State. I was Assistant United States District Attorney for the Western District of Missouri, at Kansas City four years and a half prior to coming to this State.

Q. I will ask you whether you—on the cross-examination you stated that you had written a letter to Mr. Zevely relative to the subject matter of the action of Griswold against Cobban, and you told him that you had? A. Yes, sir.

(Testimony of William M. Draffen.)

Q. What did you understand was the subject matter of the action of Griswold against Cobban?

A. That is the matter involved in their suit with reference to the location of this land—timber land.

Q. And the letter that you wrote to Mr. Zevely then had no relation to this timber land?

A. It had no relation to the case of Griswold against Cobban.

Q. Now, I ask you about the subject matter of the suit of Griswold against Cobban?

A. No, sir, not especially.

Q. Not especially? A. No, sir.

Q. Now, you had a talk with Colonel Marshall, did you not, about the letter you wrote to Zevely?

A. Yes, sir.

Q. Was that before you wrote the letter or afterwards?

A. Well, I think it was some days before I wrote it possibly.

Q. You told him at that time that you were going to write to Zevely, did you not?

A. Yes, I think I did; yes.

Q. And talked with him in the same connection about the suit of Griswold against Cobban?

A. No, sir, I did not; Colonel Marshall and myself are friends. We frequently talk with each other, and it was in the course of ordinary conversation that the matter came up, and I told Colonel Marshall that con-

(Testimony of William M. Draffen.)

tracts were entered into between Mr. Griswold and Mr. Cobban, which, upon the face of it—

Q. I didn't ask you anything about the details.

A. Well, you asked about the conversation and I was explaining it.

Q. No, I just simply asked you as to whether you didn't tell him that you were going to write.

By Mr. MAYNARD.—Isn't that conversation?

A. At that time Mr. Marshall was not connected with the suit against Mr. Cobban, and it was so stated, and we talked about the matter, and I said to him that if, upon the face of that contract, if that was true, then, as far as the Government timber was concerned, that it was being ruthlessly disposed of, and I told the Colonel that I was going to tell Mr. Zevely that I thought that that matter ought, at least be stopped.

Q. Did you say in that connection also, that you thought very likely, in that case Mr. Cobban would see the advisability of settling up with Mr. Griswold?

A. I did not.

Q. Or words to that effect?

A. No, sir. During the course of the conversation the Colonel suggested that possibly if I had a suit against Mr. Cobban, I might subject myself to criticism, and I told him that my conscience would govern that matter.

Q. That was in Colonel Marshall's office, wasn't it?

A. Yes, sir.

(Testimony of William M. Draffen.)

Q. And long prior to the time—a few days prior to the time that you wrote to Zevely?

A. Well, possibly.

Q. You got talking to Mr. Hershey about this same subject matter, didn't you?

A. No, sir, I never talked to Mr. Hershey in my life.

Q. Didn't you tell him on the street that you were going to write to Mr. Zevely about the matter?

A. I did not; it is absolutely false, and I never had any talk with Mr. Hershey in my life, except upon one occasion I went to the land office and told Mr. Hershey that I had heard he had made some statement about me in reference to some remark I had made about affairs in the land office, and with reference to the land office officials, and I asked him for an explanation, and he said that he hadn't. We talked there for a few moments, and I left him. I never had any talk with Mr. Hershey in my life about the suit of Griswold against Cobban.

Q. Do you know Mr. Pat Shannon, who lives up in the Bitterroot valley?

A. Pat Shannon, at Hamilton?

Q. Yes, sir? A. Yes, sir.

Q. Did you have any talk with Mr. Shannon about the suit of Griswold against Cobban?

A. I don't recall that I did.

Q. Did you have any talk with him referring to the subject matter of the action, about writing to Mr. Zevely?

(*Testimony of William M. Draffen.*)

A. I don't recall any such conversation.

Q. Didn't you as a matter of fact, tell Mr. Pat Shannon, at or about the same time, at Hamilton, or in Missoula, of a controversy between Griswold and Cobban, and say to Mr. Shannon that you were going to communicate with Mr. Zevely about a matter and bring Mr. Cobban to time about the matter?

A. I never made any such statement; I may have had some talk with Mr. Shannon.

Q. Did you say anything in substance to that effect?

A. I don't think so; I never said to any person that I would bring Mr. Cobban to time; I couldn't say it; I had no right to say it.

Q. You had, of course, at the time this affidavit was made, Mr. Draffen, as full and complete knowledge about the contract existing between Mr. Cobban and Mr. Griswold as the time when you talked to Colonel Marshall about it? A. About what?

Q. About the contract that you spoke of as having been referred to in the course of the conversation between yourself and Colonel Marshall?

A. Oh, yes.

Q. And if you had an opinion at the time that you talked with Colonel Marshall, that the timber lands of the United States had been ruthlessly disposed of or invaded, had you changed that opinion at the time this affidavit was made?

A. I think not; I haven't changed it yet.

Q. And when Mr. Cobban made this affidavit—in

(Testimony of William M. Draffen.)

effect that he knew—Mr. Griswold, I mean, made this affidavit, to the effect that he knew of no violations of law by Mr. Cobban, in connection with timber and stone lands, you, as I understand it, did not at that time protest against the signing by him of that affidavit?

By Mr. MAYNARD.—I object to that question for the reason that it has already been asked three or four times, and answered, and it is unfair, and it is incompetent, the whole line of the examination of this witness. And it is utterly against the rights of the witness and the Government, for counsel to proceed as he is doing and has done.

A. Except insofar as I have stated, Mr. Walsh.

Q. But, whatever the fact be about that matter, Mr. Draffen, I understand you to say that you did not at that time stand by and observe your client making an affidavit there concerning matters which you knew to be false?

By Mr. MAYNARD.—I object to this question for the reason that it is not proper direct examination, for the reason that it is leading and irrelevant and immaterial, and does not tend to prove any of the allegations of the defendant's answer, or to disprove any of the allegations of the complainant's bill of complaint relative to the land in question.

A. I did not.

Q. You did not?

A. I did not, and I resent any such imputation.

(Testimony of William M. Draffen.)

Q. Understand, Mr. Draffen, that the imputation comes from the other side, and not from us.

A. You will understand, Mr. Walsh, that I am not speaking to you personally.

Q. Mr. Draffen, one other question. Who was present at the time this affidavit was signed?

A. Mr. Stiff, Mr. Howell, Colonel Marshall, Mr. Cobban, Major Duncan, Mr. Griswold and myself.

Q. They were all present in the room at the time?

A. Yes, sir, that is my recollection about it.

STIPULATION.

It is hereby stipulated between the parties, through their respective counsel, that the testimony of the witness may be transcribed and, when transcribed, may be carefully read over by the Examiner, and corrected by him, and when so read over and corrected, may be certified by him to be correct.

I hereby certify that the testimony of the witness, William M. Draffen, has been correctly transcribed.

HENRY N. BLAKE,
Examiner in Chancery.

JOHN HAYES, a witness called in behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. Mr. Hayes, where do you live?

A. Missoula.

(Testimony of John Hayes.)

Q. How long have you lived there?

A. About sixteen years.

Q. I will ask you to state whether or not during your residence in Missoula, you ever became acquainted with Chauncey L. Griswold?

A. Yes, I know Mr. Griswold.

Q. How long have you known him?

A. Oh, I have known him five or six years.

Q. I will ask you to state whether you know one L. A. Wells? A. Yes, sir.

Q. He is known and designated as Dell Wells, isn't he? A. Yes, sir.

Q. How long have you known him?

A. Why, I have known him about the same time, five or six years.

Q. Five or six years, did you say?

A. Yes, sir.

Q. Where does this Dell Wells live?

A. Well, I understand he lives up there at Clearwater. I don't know just exactly where he lives. I never met him outside of Missoula.

Q. Does he live in what is known as the Blackfoot country? A. Yes, sir.

Q. Do you have any recollection of having heard a conversation, or overheard a conversation between Wells and Griswold, in the year 1899, in which the name of Mr. Cobban was mentioned? A. Yes, sir.

Q. I will ask you to state whether that conversation occurred in the summer or fall of 1899?

(Testimony of John Hayes.)

A. Yes, sir.

Q. Whereabouts was that conversation had?

A. Well, I was running a barn at that time, and it was in my barn.

Q. In your barn at the town of Missoula?

A. Yes, sir.

Q. I will ask you to state what, in substance, that conversation was?

A. Why, I was standing a little ways off, and Mr. Griswold and Mr. Wells were talking, and they talked in reference to doing Mr. Cobban up.

Q. Who was it that made the suggestion of doing Mr. Cobban up?

A. It was Wells that made the assertion of doing Mr. Cobban up.

Q. What did he say about doing Cobban up?

A. Well, I just overheard that remark. He said, "I will do that son-of-a-bitch up when I go back."

Q. Go back to what point, did he mean?

A. Well, I don't know to what point, it was; I just heard that remark; that is all I remember.

Q. Was that the extent of the conversation that you overheard between them?

A. Yes, sir, that is all I overheard.

Q. Did you overhear any other conversation between the two parties that I have mentioned, concerning Mr. Cobban?

A. No, sir, I never did.

(Testimony of John Hayes.)

Q. And that is all the conversation that you overheard between them? A. Yes, sir.

(Cross-examination of the witness was waived by Mr. Maynard, on behalf of the Government.)

STIPULATION.

It is hereby stipulated between the parties, through their respective counsel, that the testimony of the witness may be transcribed and, when transcribed, may be carefully read over by the Examiner, and corrected by him, and when so read over and corrected, may be certified by him to be correct.

I hereby certify that the testimony of the witness, John Hayes, has been correctly transcribed.

HENRY N. BLAKE,
Examiner in Chancery.

EDWARD B. HOWELL, a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. What is your full name, Mr. Howell?

A. Edward B. Howell.

Q. What is your business or profession, Mr. Howell?

A. I am a lawyer.

Q. How long have you been a member of the bar?

A. Twenty years.

Q. You are a member of the bar of this court, and

(Testimony of Edward B. Howell.)

of the other court, the Supreme Court of the State of Montana? A. I am, yes, sir.

Q. How long have you lived in Montana?

A. Most of the time for twenty-three years.

Q. I will ask you to state where you were living during the summer and fall of 1899?

A. In 1899, I was living in Butte.

Q. I will ask you if you had any business relations with anybody in Missoula, during the summer of 1899, or if you were practicing law there at that time?

A. I was not practicing law, and had no business relations whatever with anyone there. I occasionally transacted a little business with Mr. Cobban.

Q. When did you, if at all, go to Missoula?

A. About the first of March, 1901.

Q. Did you open an office in Missoula for the practice of law?

A. I did, yes, sir, at that time.

Q. I will ask you to state where you are now practicing law, Mr. Howell?

A. I am practicing law in Butte again.

Q. I will ask you if you had any professional engagements with R. M. Cobban, in the year 1901, and if so, what those professional engagements were?

A. I was one of Mr. Cobban's lawyers in the suit of Chauncey L. Griswold against R. M. Cobban, pending in the District Court at Missoula.

Q. Do you remember the trial of that case, and did you appear there? A. Yes, sir.

(Testimony of Edward B. Howell.)

Q. Represented your client in the hearing that was had before a referee, did you? A. Yes, sir.

Q. I will ask you to state if you were present during the time that the testimony was being taken in that case? A. I was.

Q. What have you to say as to taking the testimony in that case?

A. Yes, sir, testimony was taken.

Q. What have you to say as to the disposition of that case, and what was it?

A. Well, it was settled by a compromise.

Q. Was that before or after the testimony had been taken in the case?

A. Well, part of the testimony had been taken; the plaintiff had rested, I believe.

Q. And it was after the plaintiff had rested that this question of a compromise came up? A. Yes.

Q. Who made the proposition of a compromise, and from whom did you first hear it?

A. Well, so far as any definite proposition of compromise was concerned, I am not sure from which side it came. There were a number of intimations that had come to us from time to time, that Mr. Griswold would like to settle the suit, or that Mr. Cobban had better settle the suit, that we paid no attention to, until this time, and during the course of the trial it was intimated by someone, and I don't remember who it was now, that it could be settled for very much less than Mr. Griswold had prior to that time demanded.

(Testimony of Edward B. Howell.)

Q. How much, had he, at that time demanded?

A. Well, his claim was for thirty-five hundred dollars, and there had never been any proposition for a settlement for less than that amount, but it was intimated that his claim would be—that he was willing to cut it in two.

Q. And in pursuance of these intimations, what, if anything was done looking to a compromise or settlement?

A. Well, there was a proposition made by Mr. Cobban to him, as I remember, to settle for fifteen hundred dollars.

Q. What was done with reference to that offer?

A. Well, Griswold accepted it.

Q. Who was present when the offer was accepted?

A. When the money was paid, do you mean?

Q. Yes, sir, when the compromise was finally accepted.

A. It was done in the office of Marshall & Stiff, who were also attorneys for Mr. Cobban. Colonel Marshall and Mr. Stiff were there, and Mr. Cobban was there, and so was Mr. Griswold and his lawyers, Draffen and Duncan, and I was there myself, too.

Q. Do you remember of there being presented at any time for the signature of Mr. Griswold, an affidavit? A. Yes, sir.

Q. I had you what is marked Defendant's Exhibit "E," and ask you if you will identify that, or can

(Testimony of Edward B. Howell.)

identify it as the paper which was presented at that time, signed by Mr. Griswold?

A. I can identify it as being the affidavit signed by him at that time.

Q. In whose handwriting is that affidavit?

A. It is in my own handwriting.

Q. Were you present when his name was signed thereto? A. I was.

Q. What was done with reference to swearing him to it?

A. Well, I might say that this affidavit is the result of one or two previous conferences with Mr. Griswold.

Q. Had between whom?

A. Had between Mr. Griswold, his lawyer, Mr. Draffen, Mr. Cobban and myself, in my office. Mr. Cobban had outlined an affidavit which he claimed stated the truth in regard to the instructions had by Mr. Griswold, with reference to the timber matters; that affidavit was submitted to Mr. Griswold in my office. That affidavit stated in addition to the one which I hold in my hands, certain matters relative to the motives which Mr. Griswold had in informing the Government concerning certain alleged transactions. Mr. Griswold—I might say, further, however, that the substance of these motives were that he felt that he had not been paid enough, and feeling that he was injured by Mr. Cobban in this respect, he had given this information.

Q To whom?

A. To the Government officers, Mr. Zevely.

(Testimony of Edward B. Howell.)

Q. Well, go on.

A. Mr. Griswold read that over in my office, in the presence of Mr. Cobban, Mr. Draffen and myself, and said, "That is true; I am willing to make that affidavit." Mr. Draffen read the same affidavit, and he took his pencil and struck out all those matters; struck out of that affidavit the reasons why he had informed the Government, and indicated parts that he said Mr. Griswold should not sign. He wasn't willing to let an affidavit be made with those matters in. Then this affidavit was drawn, and Mr. Griswold asserted that he was willing to make this affidavit, and on that occasion, in my office, I stated to him that we didn't want him to sign any affidavit which was not true, and he said, "That is true; that is all true." And from there we went to Colonel Marshall's office.

Q. Is that the substance of the conversation?

A. Yes, sir.

Q. Did you take this affidavit which is marked Defendant's Exhibit "E" with you? A. I did.

Q. And that is the one to which you refer, is it not, in your testimony?

A. This is the original affidavit with the matters eliminated which Mr. Draffen struck out.

Q. And this is the one that you refer to that Mr. Griswold said stated the facts, isn't it?

A. Yes, sir.

Q. In which he stated that the matters set forth in that affidavit were true?

(Testimony of Edward B. Howell.)

A. Yes. Mr. Griswold said that both of them were true.

Q. Well, go on and state what you did?

A. Well, we took this affidavit and went down to Colonel Marshall's office for the purpose of making the settlement.

Q. Who went with you?

A. Well, Mr. Cobban was along, and we met there, Mr. Griswold, and his own lawyers, and the same opportunity was given Mr. Griswold there.

Q. By whom?

A. To—well, I mentioned the matter again, I said, "We don't want you to sign anything which you don't think is true." Colonel Marshall spoke up, and I remember the form of his phrase; he assented to what I had stated, and said, "I have never yet knowingly asked a witness to perjure himself, and so help me God, I will not begin." With that Mr. Griswold asseverated again that it was true, and signed and swore to it before Mr. Stiff.

Q. And that was done in the presence of the gentlemen whose names you have mentioned?

A. Yes, sir.

Q. Now, so that the nature of the negotiations—was that the nature of the negotiations there concerning the settlement of the suit?

A. Why, yes, the money was to be paid over and the suit was dismissed. That ended the suit.

Q. That ended the suit altogether?

A. Yes, sir.

(Testimony of Edward B. Howell.)

Q. Now, with reference to the affidavit which you have in your hand, exhibit "E," I will ask you into whose custody that affidavit was given at that time?

A. Well, I don't remember just whose custody it was on that occasion, but either Mr. Cobban's or myself. I recognize my handwriting; I know it is the original affidavit that was signed on that occasion.

Q. Now, did Mr. Griswold, to your knowledge, make any objections to the affidavit, or criticise its contents in any way?

A. Not at all, he didn't criticise the contents of the larger affidavit.

Q. Did you ever have any talk with Sparks about the settlement of this matter, as the friend of Mr. Griswold?

A. I think Mr. Sparks was the man that came to Mr. Cobban, and intimated that Mr. Griswold was willing to settle.

Q. And it was—then it was your understanding, was it not, that the proposition of settlement, came from Mr. Sparks, as the friend of Mr. Griswold.

By Mr. MAYNARD.—Now, I will object to the question, upon the ground that it is leading.

Q. What have you to say with reference to that, Mr. Howell?

By Mr. MAYNARD.—We have heard that for months. We have heard Mr. Bickford testify for months over in Helena, and I now object to his further

(Testimony of Edward B. Howell.)

testifying, when he has got his own witnesses upon the stand. The record will show that there are hundreds of objections by Mr. Bickford to the testimony, in which he testified and asked of his entrymen and entrywomen, if the facts were not so and so. Now, we have got that same kind of thing with a man who is his own witness, and I object to these leading questions being put to witnesses for the defense.

A. That is my recollection; that is, that it was Mr. Sparks that came to Mr. Cobban, or to me, or to me and Mr. Cobban, with reference to it. There may have been conferences prior to the settlement but they were not had with Mr. Cobban and myself.

Q. And you know at the time of the settlement—I believe you stated that the attorneys representing Mr. Griswold were present.

A. Yes. I want to explain that last answer of mine —All the conferences prior to the settlement, I mean the intimations that came to us during the progress of the case, were that Mr. Griswold was desirous of settling the suit. That intimation, as I say, came, I think, through Mr. Sparks. That, however, wasn't an important matter, since the later conferences was with Mr. Griswold and his lawyers.

Q. Now, as to the place where this final settlement was made, you stated it to be in Colonel Marshall's office? A. Yes, sir.

Q. There has been some evidence introduced here, by Griswold, I think, that the conference was secret,

(Testimony of Edward B. Howell.)

and that the door of Colonel Marshall's office was closed, and locked, and no one allowed to come in during this conference. What have you to say with reference to that, Mr. Howell?

By Mr. MAYNARD.—I object to that, for the reason that it is irrelevant and immaterial to any of the issues in this case.

A. Well, the door was shut; I couldn't tell about it being locked.

Q. What have you to say with reference to the affidavit or any proceedings that were had during the time this affidavit was signed, being by compulsion?

A. The making of the affidavit was certainly not under compulsion; it was part of the consideration for the settlement; there is no doubt about that.

Q. And it was made as a part of the consideration for the settlement, and as one of the conditions of the settlement.

A. That is it exactly; otherwise, there was no compulsion. If Mr. Griswold considered that compulsion, why that is his privilege of looking at the matter in that way.

Q. Did you see any objections raised or hear any raised by either Mr. Griswold himself, or any of his legal representatives, as to the contents of the affidavit, or anything stated therein.

A. No objection whatever, no, sir.

Q. Was the affidavit read by them or shown to them?

(Testimony of Edward B. Howell.)

A. The affidavit was certainly read by Mr. Draffen, because he struck out certain portions of the original affidavit that were objectionable to him, and the present affidavit which I hold in my hand, was what was left.

Q. And it was copied by you, was it?

A. Yes, sir, it was copied by me.

Cross-examination.

(By Mr. MAYNARD.)

Q. Were you Cobban's attorney from the beginning of this suit? A. Yes.

Q. When was it commenced?

A. I couldn't tell the exact date without reference to the files and the papers; I think it was in February, 1901, some time.

Q. Who was associated with you in the defense at the beginning, before Marshall & Stiff came into the case? A. Mr. Hershey.

Q. What Hershey?

A. Mr. Elmer E. Hershey, of Missoula.

Q. Register of the United States Land Office at that place? A. Yes, sir.

Q. What? A. Yes, sir.

Q. You and Hershey were Cobban's attorneys from the beginning, were you? A. Yes, sir.

Q. And the claim was for thirty-five hundred dollars? A. Yes, sir.

Q. When was the suit settled?

A. This affidavit is sworn to on the 12th day of June,

(Testimony of Edward B. Howell.)

1901. I should say that the suit was settled on that day.

Q. So the suit had been pending in the District Court in the county of Missoula, for about five months?

A. Yes, sir.

Q. What is that?

A. That is my recollection, four or five months.

Q. When was that suit referred to Mr. Murray to take the proofs?

A. Four or five days, perhaps a week prior to the time of its final settlement.

Q. Did the taking of the testimony commence at once, upon the order of reference being made?

A. Within a day or two after the order, I think.

Q. So that the testimony under the order had been taken during the first days of June, before the referee, and all of the plaintiff's testimony had been given?

A. Yes.

Q. What?

A. All of the plaintiff's testimony had been given; not all of the defendant's, though.

Q. No, but I say the plaintiff had rested his case.

A. Yes, sir.

Q. Now, was there at any time anything said to you or to anybody else in your presence and hearing, by Mr. Draffen or his partner, Mr. Duncan, about a settlement of this suit, until the plaintiff had rested his case?

A. No, sir.

(Testimony of Edward B. Howell.)

Q. No overtures of any kind for a settlement had been made?

A. Not unless the intimations which we had received from parties who claimed they had talked with Griswold could be regarded as overtures.

Q. Did those intimations come to you before the plaintiff had rested his case?

A. Oh, yes, they were coming to us from the time the suit was started, almost.

Q. From the time the suit was started, do you say?

A. Yes, sir.

Q. You mean the suit was begun in February?

A. Yes, sir.

Q. Who brought those intimations to you?

A. Various persons.

Q. Name one.

A. I am not good at recalling names, and these intimations would come in in a very roundabout way. I don't remember when exactly. I remember one of the first that come to us was from Major Catlin, who had been talking with some gentleman from up in the Bitterroot, who had been in Mr. Draffen's office, and Mr. Draffen had told him, so he reported.

Q. My stars! We are getting a good way off.

A. Well, you have asked me for this information. Mr. Draffen had told him about the inspector in the Interior Department being an old school friend of his, and how he expected a mighty good fee out of this suit against Cobban, and the fact that that conversation

(Testimony of Edward B. Howell.)

was brought to us was an intimation to us that Mr. Cobban had better settle that suit and could settle the suit. Now, as you say, that is a very roundabout way, but you have asked me about the intimations. I don't remember that man's name. Major Catlin, no doubt, could tell you who that man was. Another man who brought one of these intimations was an old gentleman, an old Grand Army man, who lives down in Idaho now, and I cannot recall his name.

By the EXAMINER.—Mr. Reeve, do you mean.

A. Yes, sir, Mr. Reeve.

Q. Mr. John B. Reeve?

A. Mr. John B. Reeve, yes, sir.

Q. Yes, we are all acquainted with that gentleman.

A. He brought us the report of the conversation that Mr. Griswold had had with him, in which Mr. Griswold told how much he regretted these prosecutions that were about to be started against so many innocent people there. That his heart bled for them, and that Mr. Cobban had better settle it with him, and that he could do Mr. Cobban a great deal of good yet, if Mr. Cobban would just settle that suit. Now, that is about it; but I never heard Mr. Griswold say that, but that is one of the intimations we had.

Q. Well, can you name any more?

A. Well, Mr. Sparks came to us, as I remember, more than once during the course of that trial.

Q. During the course of that trial, you mean the hearing before the referee?

(Testimony of Edward B. Howell.)

A. Yes, during the course of the trial.

Q. You mean during the taking of the testimony?

A. Yes, sir.

Q. Before the referee that is what you call the trial?

A. Yes, sir.

Q. How long had the taking of the testimony—how long did it take?

A. Well, my recollection is that we were at it two or three days before the final settlement, the actual taking of the testimony.

Q. Just two or three days?

A. Yes, that is my recollection about it.

Q. Well, so you got an intimation from Sparks of the same kind, did you? A. Yes, sir.

Q. That is, that Mr. Sparks reported to you and Cobban something that Griswold had said.

A. That is my recollection about it.

Q. Well, now, isn't it true that Mr. Sparks reported to you what Mr. Griswold had said, because you and Cobban had sent him to Mr. Griswold to find out or sound him?

A. No, we didn't send him; at least I didn't have anything to do with sending him.

Q. Well, as to whether or not Mr. Cobban did, you don't know?

A. No, I can't say that I know; it might have been at the last that he was authorized, but I wouldn't venture to say whether Sparks at any time had any commission from Mr. Cobban to see Mr. Griswold.

(Testimony of Edward B. Howell.)

Q. But he might have been authorized.

A. He might have been authorized. I know that the parties were brought together through the agency of some one. They were certainly brought together and had a conference.

Q. They were brought together and had a conference?

A. Yes, but whether Mr. Sparks had anything to do with bringing them together or not, I couldn't say at this time.

Q. And you won't say positively but what the parties being brought together at the time, and under the circumstances that you have testified to, was through the intervention of Mr. Sparks, who had been working for Mr. Cobban, and that Mr. Cobban received the report from Mr. Sparks, because he had sent him.

A. I didn't understand that Mr. Sparks had been working for Mr. Cobban, or was working for him at this time.

Q. Well, you know that Mr. Sparks was working for the defendant in this case, did you not?

A. At that time?

Q. Yes, in the estimating of the timber.

A. I think I did know it at the time, yes.

Q. Yes, you think you did know it at the time.

A. Yes, sir, I think I did.

Q. You think you knew that he had been working for Mr. Cobban.

A. That he had been, not that he was at that time.

(Testimony of Edward B. Howell.)

Q. But, that he had been working for him.

A. Yes.

Q. So Sparks, as the representative of Mr. Cobban, and working for Cobban, was the go-between and brought the parties together. Now, this wasn't—wasn't it singular, Mr. Howell, that this suit should have been pending during all these months, and that it should have been brought to a hearing, and that the plaintiff's testimony should have all been given, and that not a word should have been said directly about a settlement of the case by Mr. Griswold, himself, or by his attorneys, and that it should at that particular time be settled. Wasn't that somewhat singular?—resulting from intimations of as vague and general character as you have now assigned?

A. I don't regard it as singular. I always thought that Mr. Griswold wanted to settle the suit, and that it was brought with the intention of settling, rather than having it go to judgment, and a final judgment rendered.

Q. But you say, Mr. Howell, that the fact is that the case had proceeded so far that the plaintiff's testimony was in and the plaintiff has rested, without Mr. Draffen or Mr. Duncan, the legal representatives of Mr. Griswold, saying a word to you about settling the suit.

A. That is true, we were having no confidences with each other.

Q. Isn't it a matter of fact, in your experience, that where attorneys representing the plaintiff are at all anxious to settle a case, that they try to settle it before

(Testimony of Edward B. Howell.)

the testimony is heard in court, or something is said by them about it? A. Sometimes that is so.

Q. You admit that Mr. Griswold himself didn't say anything to you or in your presence about settling the suit. A. No.

Q. Well, now, then, under those circumstances—

A. That is, not until —

Q. I mean until after the negotiations.

A. I mean until after the negotiations had begun.

Q. Until the negotiations had commenced?

A. Yes, sir.

Q. Now, I ask you, wasn't it somewhat singular, under those circumstances, when nothing had been said by Mr. Griswold or his attorneys up to that time, that the case was in fact then settled?

A. Why, I don't regard it at all singular under the circumstances.

Q. Well, now, Mr. Howell, wasn't the fact of the settlement dependent entirely upon the circumstances?

A. Yes, I think I can say that.

Q. Yes, and weren't the circumstances simply these, that you and Cobban knew that the Grand Jury of the United States was then in session in the court in the city of Helena?

A. No, they were not simply that.

Q. Well, wasn't that the main reason?

A. So far as I was concerned, that was one reason. Mr. Griswold, we knew, had been making what we considered false representations to the Government

(Testimony of Edward B. Howell.)

through its agents, of the operations of Mr. Cobban in securing timber land, and the making of this affidavit was the method by which we hoped to make him tell the truth. We knew that if he signed that affidavit and swore to it, that we would have that much of a hold on him. It had been intimated by these various persons that the occasion of his hostility toward Mr. Cobban was his demand for this money, and if that demand were satisfied, his hostility would cease; and while I didn't have much hope of heading off any investigation that the Government might see fit to make, yet I was in hopes that Mr. Griswold might be induced to tell the truth from that time on, and if he was induced to tell the truth, that there would be a consideration in settling he suit, inasmuch as there were a great many persons involved, and persons who would suffer some inconvenience and loss of time, and money, if the prosecution proceeded. Now, this was my motive, as near as I can explain it.

Q. And in pursuance of that motive which you now have testified to you did these different acts?

A. Yes, sir.

Q. Well, now, then for the purposes, you say, of getting this hold on Mr. Griswold, you started in upon this affidavit business?

By Mr. WALSH.—I object, if your Honor please, to the statement of counsel, that the witness has testified, that for the purpose of getting a hold upon Griswold, these acts were done. It is not the testimony of the wit-

(Testimony of Edward B. Howell.)

ness, and is purely an intimation of counsel, and having no foundation in fact.

By Mr. MAYNARD.—What I say is, that the absolute truth is, as appears in the record, and taken down by the stenographer a moment ago, that the witness did say that they would get a hold upon Mr. Griswold, by getting this affidavit.

A. I don't remember of using that term.

By Mr. MAYNARD.—I ask for my own protection against these wanton insults, and so on, that the stenographer read the testimony.

By the EXAMINER.—I don't think you are justified in drawing that inference, but nevertheless we will have the stenographer read the testimony.

(The stenographer referred to his notes, but did not at the time find the statement referred to.)

Q. Well, I say, that the proposition that you have now testified to, Mr. Howell, for the purpose of preparing this affidavit to aid you, you sat down and prepared this first proposed affidavit.

A. My recollection is that Mr. Cobban wrote the first affidavit.

Q. Mr. Cobban himself? A. Yes, sir.

Q. Where did he write it?

A. At home, I think; I wasn't present when he wrote it.

Q. And brought it to you for examination?

A. Yes, sir.

(Testimony of Edward B. Howell.)

Q. And then you put it in your own handwriting?

A. I couldn't say whether I copied it before it was submitted to Mr. Griswold, or not. After Mr. Draffen had stricken out the parts objectionable to him, I copied what was left.

Q. No, no, but when the proposed affidavit that you wanted Mr. Griswold to sign and swear to, that you say was written by Mr. Cobban originally, was that in Mr. Cobban's handwriting when it was tendered to Mr. Draffen?

A. Well, I say, I cannot tell you whether that was ever copied before it was submitted, or not; Mr. Cobban's handwriting isn't as plain as some other people's.

Q. I should think not.

A. And it is possible that it was in Mr. Cobban's handwriting, but as I say, I cannot tell you whether it was submitted in the original draft.

Q. Had you seen Mr. Inspector Zevely in Missoula?

A. No, sir. he never came near me, I didn't see him.

Q. You didn't see him at all?

A. No.

Q. You knew that he had been there?

A. Mr Zevely, I don't think ever went to Mr. Cobban's office, or went near there, or to any friends of Mr. Cobban. He seemed to confine his conferences to Mr. Griswold.

Q. He wasn't looking at that time after persons who had violated the criminal laws of the United States. He was looking for people who would aid the Govern-

(Testimony of Edward B. Howell.)

ment, and not who were opposed to it. I ask if you saw Mr. Griswold, and then I asked if you didn't know that Mr. Zevely had been there.

By Mr. WALSH.—If the statement of counsel is any portion of a question, we should like to have the witness answer it,, and if not, we should like to have it stricken out, and we would like to have the counsel state now which it is. If it is a question of counsel, we will have it answered; and if it is a mere statement, shall ask to have it stricken out.

By Mr. MAYNARD.—It is not part of a question.

By Mr. WALSH.—Well, then, we will move to strike it out.

Q. Did you know Mr. Zevely had been there?

A. I had heard so.

Q. And you knew—you had heard what his business was there.

A. Yes, I had heard what his business was.

Q. And you had heard that he had witnesses there in Missoula, and had taken their testimony?

A. Yes, I had heard that also.

Q. You knew at the time, also, that the Grand Jury was in session, did you not?

A. Well, I had heard that it was called; I am not sure that it was in session, at that time. It might have been.

Q. You knew that it had been called at the time of the making of this affidavit?

(Testimony of Edward B. Howell.)

A. Yes, sir.

By the EXAMINER.—We will now adjourn until to-morrow morning at ten oclock.

An adjournment was then taken until ten o'clock A. M. Saturday, April 19th, 1902.

HENRY N. BLAKE,
Examiner in Chancery.

Saturday, April 19th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

E. B. HOWELL, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. You said last night Mr. Howell that you insisted upon the making of this affidavit by Mr. Griswold as one of the conditions of the payment by Mr. Cobban to him of the sum of $1500, and the settlement of the suit?

A. That was one of the conditions.

Q. What was the second condition?

A. Well, the dismissal of the suit.

Q. What was the third condition?

A. I don't recall that there was any other condition imposed on Mr. Griswold. Mr. Griswold was requested to give up certain papers that he had.

Q. What papers were those?

A. One was the contract he had been using against Mr. Cobban.

Q. What other papers?

A. I don't recall what other papers.

(Testimony of Edward B. Howell.)

Q. And the statement of account?

A. I don't recall that. I do recall that he furnished Mr. Cobban with a copy of the statement which he had given to Zevely.

Q. And the record and exhibit that had been used in the trial of the cause were to be taken out of the files, were they not, by stipulation?

A. Well, they were taken out. I don't remember whether it was done by stipulation or not. Each party, I think, drew down their own papers from the hands of the referee.

Q. That is, if they were taken from the referee or taken from the clerk, they were passed over to you, were they not?

A. To me or to Marshall & Stiff, or to Mr. Cobban, I am not sure which at this time.

Q. And the expenses that had been incurred, the court expenses, were to be divided equally, were they not? A. That is my recollection.

Q. That is each was to pay his own witness fees?

A. Well, I think the expenses of the referee were divided equally, and otherwise the parties paid their own expenses.

Q. The referee and the stenographer's costs were divided equally and each side paid for their own witnesses? A. Yes, sir.

Q. You secured the affidavit from Mr. Griswold?

A. He gave it.

Q. And you obtained possession of it?

(Testimony of Edward B. Howell.)

A. Yes, sir.

Q. The one that is marked as Exhibit "E" in this case? A. Yes, sir.

Q. That you identified yesterday?

A. Yes.

Q. And you obtained the contract which you say Mr. Griswold had been using against Mr. Cobban?

A. Yes.

Q. Do you know where that original contract is now?

A. No, I don't. I certainly haven't got it myself and I could not say where it is; I suppose Mr. Cobban has it.

Q. Did you have occasion to examine that contract during the month of preparation for the trial?

A. Yes.

Mr. MAYNARD.—I show the witness Complainant's Exhibit "A."

Q. I will ask you to examine this exhibit and see if it is not a true and exact copy of that original contract?

Mr. BICKFORD.—To which we object for the reason that it is not proper cross-examination; for the further reason also that there was no opportunity given the witness to compare the same with any paper which purports to be the original contract.

A. I could not undertake to identify this as copy of the original.

Q. I wish you would examine its contents and see if if you note anything that in anyway differs from the original contract?

(Testimony of Edward B. Howell.)

Mr. BICKFORD.—The same objection?

A. Well, I have not got the original contract sufficiently in mind to do that; I had nothing to do with the making of this copy.

Q. If there is any particular in the slightest degree that differs from the original, I wish you would point it out.

Mr. BICKFORD.—The same objection to this question, and the further objection that the witness has already testified that he has not sufficient knowledge to make the comparison.

A. I would be unable to do it for the reasons I have stated.

Q. Very well. Now, Mr. Howell, I will ask you if this settlement was not made with Mr. Griswold, and the money, $1500, paid him under the terms and conditions which you have referred to, the making of this affidavit, the delivery up of the contract and the withdrawal from the files, because you feared and Mr. Marshall feared and Mr. Cobban feared that he, Cobban and others, would be indicted by the Grand Jury that was then in session if such settlement was not made?

A. I do not believe I have any right to speak for Mr. Cobban in that matter, whatever his motives were for the settlement; I as his attorney have no right to do so. I don't know that I would have any right to speak for Marshall & Stiff in the matter, and if I stated my own views it would be largely the matter of the opinion which I held at the time of the status of affairs, and I take it you do

(Testimony of Edward B. Howell.)

not care for an expression of my opinion in the matter. I stated yesterday somewhat of what my own motives were. I do not know that I have anything to add to othat.

Q. I have no objection myself to your giving your opinion?

Mr. WALSH.—He has already answered that question; he answered it at length yesterday, and told just exactly what motive actuated him in making the settlement.

Q. You know, Mr. Howell, that notwithstanding the fact that you had secured this affidavit from Mr. Griswold the matter was brought before the Grand Jury and was investigated by them, and that eleven indictments for subornation of perjury were returned into court by the Grand Jury against your client, Mr. Cobban?

Mr. WALSH.—Objected to as improper cross-examination, and as immaterial, irrelevant and incompetent.

Q. You know that, don't you, Mr. Howell?

A. Well, I have heard it; I think I can say that I know it. I am not sure that I have ever seen the indictment, but I have every reason to believe that the indictments were found.

Q. And you know the indictments for subornation of perjury were returned gainst Mr. Cobban's employee, Mr. Catlin?

Mr. WALSH.—The same objection.

A. I understood it on the same ground; I do not remember the number that were found.

Q. And you know of a large number of indictments for

(Testimony of Edward B. Howell.)

perjury which were returned by the Grand Jury against various entrymen and entrywomen who had entered land and made final proofs on the same and afterwards conveyed to Mr. Cobban?

Mr. WALSH.—The same objection.

A. Yes, I have upon the same basis of information.

Q. Who in turn conveyed to the defendant in this case. Now, do you remember the facts, Mr. Howell, that the Grand Jury were in the city of Helena investigating these proceedings? A. I do, yes, sir.

Q. Do you remember the fact that you appeared before the Grand Jury and testified before them?

A. Yes, sir.

Q. And that Mr. Hershey, the other lawyer for Mr. Cobban appeared as a witness?

Mr. WALSH.—Objected to as not proper cross-examination, and I call upon counsel to state in what way it is material or relevant to the matter inquired about in direct examination.

Mr. MAYNARD.—I would just as soon as not. It is material in this way, that Mr. Howell has sworn that they obtained this affidavit for the purpose of having and getting a hold upon Mr. Griswold, and that as the Government claims the sole purpose for which this affidavit was secured and these other conditions exacted and the money paid by Cobban, was for the purpose of heading off any investigations that might be made by the United States Government into these crimes against its laws that the Gov-

(Testimony of Edward B. Howell.)

ernment charges that Mr. Cobban and his associates committed, and that Mr. Howell was the attorney of Mr. Cobban at the time and secured this affidavit at the time, and that he afterwards for the express and sole purpose of trying to prevent the jury from returning indictments against Mr. Cobban, his client, appeared before the Grand Jury and in my presence and hearing as a representative in part of the Government, subpoenaed there at the instance of somebody I know not, produced this affidavit, this Exhibit "E" that I have referred to, and read it to the jury for the sole purpose of trying to destroy the testimony that Mr. Griswold had previously given before the Grand Jury, and induce them not to return indictment against their clients, because solely of this affidavit which they had exacted from him in Missoula.

Mr. WALSH.—Counsel seems to have overlooked the question. The question was, did not Mr. Hershey testify before the Grand Jury? It does not appear this has anything to do with Mr. Hershey testifying before the Grand Jury.

Mr. MAYNARD.—I will add, Mr. Hershey, who was one of the lawyers of Cobban and who had been retained originally by him and colabored with Mr. Howell, who is now on the stand, as attorney for Mr. Cobban, appeared there also.

Mr. WALSH.—In obedience to a subpoena sent by you?

Mr. MAYNARD.—No, sir, except so far as he was sub-

(Testimony of Edward B. Howell.)

poenaed for the purpose of producing the records that he had in his hand as the custodian required by law to keep them.

Mr. WALSH.—I do not see what the question of whether Mr. Hershey did or did not testify before the Grand Jury has to do with the testimony given by this witness, and I therefore object that it is not proper cross-examination and that it is utterly immaterial and irrelevant.

Mr. MAYNARD.—I am willing to strike Mr. Hershey's name out of the question.

Mr. BICKFORD.—Then we move to strike out the statement of counsel as not pertinent and responsive to the question and as not showing any reason for the cross-examination of the witness along the lines proposed, and for the further reason that the question presupposes a number of facts which are not shown either by the testimony of the witness or by the record in the case with reference to the appearance of this witness before the Grand Jury, the inference being thrown out by counsel that the witness appeared before the Grand Jury in some irregular way. It also presupposes that a crime had been committed, and charges that crime had been committed on the part of the defendant in this case or anybody shown by the witness to be connected with him in any way, but by others with whom it is not shown that the defendant in this case has any connection whatever.

The EXAMINER.—Do you withdraw the question?

Mr. MAYNARD.—In my explanation I am simply wil-

(Testimony of Edward B. Howell.)

ling that Mr. Hershey's name need not appear in the stenographer's notes; that is all, in what I said in reply to the question that was addressed to me by my brother Walsh.

Q. (Last question read.)

Mr. MAYNARD.—I withdraw the question.

The WITNESS.—I desire to protest against the statement of counsel as to the manner in which I appeared before the Grand Jury, as being most unfair and untrue in its implications. It was not a voluntary proceeding on my part in any sense.

Q. Now, Mr. Howell, you appeared there before the Grand Jury, did you not? A. I did.

Q. And gave testimony? A. I did.

Q. And you produced this affidavit, Exhibit "E"?

A. I did.

Q. For what purpose?

A. I appeared in response to a subpoena of the United States directing me to produce that affidavit.

Q. Do you know who caused that subpoena to be issued?

A. I don't; it came from the clerk as I remember. My supposition was that it was probably the foreman of the Grand Jury.

Mr. WALSH.—I should imagine if the representative of the Government desired to get at all the facts, that it was the United States attorney who sent for him.

(Testimony of Edward B. Howell.)

Q. You say your supposition was that it was the foreman of the Grand Jury?

A. Yes, but I don't know who authorized the issuance of it. I received the subpoena.

Q. But you know very well, Mr. Howell, that it is the truth that Mr. Gold T. Curtis of Great Falls, who was then the foreman of the Grand Jury, that he was the one who was instrumental in getting that subpoena out?

A. I do not. I was in Missoula, and the subpoena came to me there from Helena.

Q. Why do you say of your own accord that your supposition was that it was the foreman of the Grand Jury?

A. Well, I was interviewed by Mr. Curtis after I got to Helena in regard to it.

Q. You did not see me as one of the representatives of the Government in regard to the matter, did you?

A. No.

Q. You had never had one moment's conversation with me, and I did not know who you were, until you appeared as a witness before the Grand Jury, did you?

A. No.

Mr. WALSH.—Objected to as not proper cross-examination.

Q. Isn't that so?

A. I don't know whether you knew who I was or not.

Q. But you knew that I had not had any conversation with you? A. Yes, that is true.

Q. When you met Mr. Curtis in Helena and had a con-

(Testimony of Edward B. Howell.)

versation with him, had you had any previous communication with him? A. No.

Q. Do you know how Mr. Curtis became informed of the existence of this affidavit?

A. I suppose someone had told him.

Q. Don't you know who did?

A. No, I can't say that I do.

Q. Didn't you inform anybody of the existence of this affidavit?

Mr. BICKFORD.—Objected to as not proper cross-examination and irrelevant and immaterial.

A. Why, I cannot say for certain, but I believe that I did inform various persons; there was no particular secret about the fact that the affidavit had been made. The attorneys in the case all knew it.

Q. But did you not inform persons connected with the case in some way that was then about to be considered and was being considered before the Grand Jury, for the sole purpose of having that affidavit produced before the Grand Jury? A. No, I did not.

Q. If not for the sole purpose, wasn't it for that purpose?

A. I did not inform anyone for that purpose.

Q. You did not? A. No, I did not.

Q. For what purpose did you inform these persons?

A. Well, I don't believe I have testified for certain that I informed anyone, but it was not a matter of great secrecy and it is possible that I did. Marshall & Stiff certainly knew it.

(Testimony of Edward B. Howell.)

Q. Mr. Hershey knew it, too, didn't he?

A. Yes, sir.

Q. He knew of this affidavit?

A. Yes, he certainly did.

Q. And Hershey's father in law was six times indicted by that same Grand Jury?

Mr. BICKFORD.—Objected to as not proper cross-examination.

A. Well, I don't know how many times he was indicted, Mr. Maynard; it was about that number, but I was not his attorney for the defense, and I would not want to testify to the exact number of times he was indicted. I know Mr. Hershey was taking an interest in it on that account, as I suspect, among others.

Q. And you know that an adjournment of the Grand Jury had taken place for some days?

A. Well, I heard so.

Q. And that after the adjournment, they convened one evening after an adjournment of three or four days and you appeared there before the Grand Jury with this affidavit? A. I certainly did.

Q. And that after you had shown this affidavit to the jury and explained the motive that led to the making or exacting of the affidavit from Mr. Griswold, that in one hour after you left the jury-room they returned these indictments against your clients? You know that, do you not?

Mr. WALSH.—We object to that as not proper cross-

(Testimony of Edward B. Howell.)

examination and utterly immaterial, irrelevant and incompetent, and we call upon counsel to state now upon the records what relevency to this inquiry has the fact that a Grand Jury returned an indictment against anyone?

Mr. MAYNARD.—Why, you know if this was a quiz class in a law school and you were a professor and you had a right to call upon me as a student, I would most cheerfully answer you, but I recognize no obligation to explain upon the record and satisfy your curiosity.

Mr. WALSH.—But it seems to me so utterly beyond what is proper examination, that it occurs to me if you were called upon to say upon your professional honor, you would say frankly that it does not have any relevancy at all, and could not possibly be introduced any where in any kind of a case, the very fact that a Grand Jury had returned an indictment against anybody.

Mr. MAYNARD.—What I say is this, that the very gist of this whole proposition lies right in this one point that your client undertakes to get a hold upon the Government witness by securing this affidavit, and that it did that for the sole purpose of breaking down the credibility of Mr. Griswold, as you are seeking to do it now, and that Mr. Cobban's attorney, after having secured this affidavit, appeared before the Grand Jury solely and for the express purpose to try to make them believe that he ought not to be believed in the testimony

(Testimony of Edward B. Howell.)

which he had given them because of this affidavit which Mr. Howell himself had obtained from him as he has testified. Now, then, if it is not the most competent of cross-examination to have those motives and those facts appear on the record—

Mr. WALSH.—We make no objection against those matters at all and have not made any. We have permitted you to cross-examine Mr. Howell concerning his motive and all the facts and circumstances. We are now objecting to your asking this witness whether the Grand Jury did not return certain indictments upon the ground that the fact that the Grand Jury returned indictments upon these matters is absolutely and utterly irrelevant, as you must certainly know. The fact that the Grand Jury returned indictments cannot possibly be considered by any Court as material to any inquiry in this case at all, it being expressly provided in the law that no presumption of any kind can allow it from the fact that the Grand Jury returned indictments.

Mr. MAYNARD.—The purpose is to show that the conspiracy that had been entered into by Cobban and his attorneys for the purpose of destroying the Government case by wresting this affidavit under the circumstances, failed completely.

Mr. WALSH.—The fact that it failed is a matter of no consequence, and it does not concern the Court at all whether the Grand Jury did or did not return indictments.

(Testimony of Edward B. Howell.)

Mr. MAYNARD.—That is a matter for argument later.

Mr. WALSH.—You won't assert before the Court that it is?

Mr. MAYNARD.—I am not putting in any evidence here that I am not going to rely upon. If I did not regard it as the supremest importance, and if I did not know that you considered it of the supremest importance, I would not ask the question.

Q. I will ask you if you do not know that within one hour after you left the jury-room, or that same night, the Grand Jury did return indictments against your client after you produced this affidavit?

Mr. BICKFORD.—The same objection.

A. Well, they certainly returned indictments, and I understand it was done that same night. Whether it was done within one hour I could not say; I was not in the Grand Jury room after I had finished my testimony and I was not in the vicinity of the Grand Jury room, and I was not in the office of the clerk that night again; I went to the hotel and went to bed and next morning I read in the papers that Grand Jury had returned a number of indictments, and that was the first information that I had of the returning of indictments. Of course, I have no means of knowing anything else to the weight which my testimony had pro or con in the matter.

I desire to correct a statement I made yesterday in

(Testimony of Edward B. Howell.)

connection with the defendant in this case, Mr. Clark. I think I assented to a question that Mr. Sparks was in the employ of Mr. Clark. At the time I was thinking of Mr. MacLaughlin and got him confused with Mr. Sparks. I do not really know whether Mr. Sparks was ever in the employ of Mr. Clark or Mr. Cobban.

(By Mr. MAYNARD.)

Q. The distinction of your absolute knowledge which you have endeavored to make three or four times—I don't ask you for that. I ask you if you did not know, as we know everything in this world outside of direct personal knowledge which comes from the first form of information, that Mr. Sparks was working for Mr. Cobban and for the defendant in this case?

Mr. WALSH.—Objected to as immaterial and irrelevant and incompetent, and not proper cross-examination, also as furnishing no proper basis for establishing the relationship of agency between Mr. Sparks and Mr. Clark.

A. At what time do you refer to?

Q. During the months that had preceded the trial of the Griswold against Cobban suit, and during the months that the work that Mr. Griswold had performed was done?

A. Well, I can't say as to any employment during the months that Mr. Griswold had worked, but during the time after the institution of this action, Mr. Sparks was not in the employ of Mr. Cobban. I do not know

(Testimony of Edward B. Howell.)

whether he was in the employ of Mr. Clark or not; and I don't know whether he ever had been.

Redirect Examination.

(By Mr. BICKFORD.)

Q. As a matter of fact, do you know that Mr. Sparks had ever been employed by Mr. Clark?

A. I do not.

Q. Now, if you were to testify concerning the question as to Mr. Sparks employment by the defendant in this case, what would you say?

A. Well, I would simply say that I did not know anything about it.

Q. Now, I believe you testified that Mr. Zevely was in Missoula at the time when the trial of the case of Griswold against Cobban was on?

Mr. MAYNARD.—No, he did not.

Q. I ask you whether you did so yesterday?

A. I did not testify as to that.

Q. Have you any knowledge concerning that whatever?

A. No. I saw by the morning paper in Missoula during the progress of the trial that Mr. Zevely had registered, I think at the Missoula Hotel, but I did not know Mr. Zevely at that time, even by sight.

Q. Now, I want to ask you, Mr. Howell, with reference to the statement made by another witness concerning occurrences in the room at the time when this affidavit was signed by Griswold. As a matter of fact

(Testimony of Edward B. Howell.)

was anything said concerning the testimony that had theretofore been given by Griswold either in the trial of the case of Griswold against Cobban or in a hearing before Zevely as a representative of the Interior Department?

A. There was nothing said as to his testimony in the trial of Griswold against Cobban, but there was as to the testimony he had given in the hearing before Zevely.

Q. Will you kindly state what was said at that time?

A. Well, he produced a copy of his testimony and that of the other witnesses, which he submitted to us.

Q. Did you at that time look it over?

A. Oh, yes. There was a portion of it which he was not willing should be given into the hands of Mr. Cobban; he allowed Colonel Marshall to read that portion, and on the statement of Colonel Marshall that it had nothing to do with any of the timber lands that Mr. Cobban was interested in, why, that was cut out and returned to him; the balance of the statement was delivered to Mr. Cobban.

Q. What was said with reference to any conflict between the testimony that was given before Zevely and the affidavit which was at that time given by Griswold to you?

A. Well, I don't recall that there was anything said at that time about the conflict; we were not endeavoring to convict Mr. Griswold of any possible misstatement or perjury, but simply to have him state what we considered to be the truth.

(Testimony of Edward B. Howell.)

Q. Well, in getting him to state what was the truth in the affidavit, was there anything said about the statements made to Zevely being false?

A. I don't recall that there was, no; that was left to speak for itself.

Q. Did Griswold at that time make any statement or assertion with reference to the testimony given to Zevely being true? A. No.

Q. Now, from whom did the intimation or suggestion of a settlement come in this case of Griswold against Cobban?

Mr. MAYNARD.—I object to that, as questions that were asked several times by counsel when the witness was on the stand in direct examination and thoroughly gone into on cross-examination, and he has answered several times, and I object now to the counsel going again into that subject matter as incompetent.

A. You mean at the time of the trial when the settlement was afterwards made?

Q. Yes, at and before the time when the settlement was actually made?

A. Well, immediately before it was, Mr. Sparks.

Q. Well, you had heard from others besides Mr. Sparks; these propositions had come from others besides Mr. Sparks?

A. Oh, there had been nothing—

Mr. MAYNARD.—We object to that as leading, as having been thoroughly inquired into. The witness testified yesterday afternoon and stated the persons and

(Testimony of Edward B. Howell.)

stated this soldier, and stated the man up at Hamilton, and it certainly is not competent again to go over this ground.

A. I think Mr. Sparks was the first one who brought any definite proposition.

Q. And he was the person that you first heard it from? A. Yes, sir.

Q. What, if anything, was said or what have you to say as to there being anything said at the time this affidavit was made, that the affidavit contained nothing but conclusions of law?

A. There was no such statement made.

Q. Now, was there anything said about any portion of it containing nothing but conclusions of law?

A. My recollection is that no such remark was made; it was certainly not made by Mr. Griswold.

Q. And were there any objections made to the affidavit by Mr. Griswold at all?

A. No, absolutely none.

Q. In his testimony given upon behalf of complainant in this case, and on the question on the giving of this affidavit, Mr. Griswold gave the following testimony with reference to what happened in the office of Colonel Marshall. The question was asked on cross-examination: "Q. It was all open and above board? A. No, sir. Q. They did not call you into any back room and lock you up with anybody? A. Yes. Q. Right outside; everybody could see what was going on? A. No, sir, locked in with the gentlemen named in the

(Testimony of Edward B. Howell.)

private room of Marshall & Stiff's office." What have you to say as to the correctness of that statement made by Griswold in his cross-examination?

Mr. MAYNARD.—I object to that question, as the question has already been asked and answered yesterday. The question was asked Mr. Howell as to whether the door was locked or not, and he said he didn't know, that the door was closed and it was in Colonel Marshall's private office, but whether it was locked or not he did not know.

A. Well, that testimony, while true in part, conveyed a false impression. I don't believe the doors were locked. The doors were closed. As to its being in a private office, it is the entrance office of Marshall & Stiff, and the doors were closed. It was a purely voluntary gathering and any one of us could have left readily without any objection or any difficulty.

Q. What have you to say as to whether there was any compulsion about anybody remaining there any longer than they wanted to?

A. Absolutely none.

Q. And the examination, as I understand you, was, or the proceedings, I should say, were as open and above board as those proceedings usually are in a lawyer's office?

A. Yes, sir. It is no unusual thing for a lawyer to close the doors of his office when he is transacting any business.

Q. Now, with reference to the statement as to your

(Testimony of Edward B. Howell.)

appearance before the Grand Jury, had you taken any steps to procure this attendance before the Grand Jury? A. I had not.

Q. You say you testified before the Grand Jury and presented this affidavit? A. Yes, sir.

Q. I will ask you to state whether or not you had any knowledge concerning subsequent proceedings with reference to the indictments that were found by the Grand Jury at that time?

A. None whatever.

Q. Do you know in what condition the indictments are now with reference to the action of the Court upon the questions of the pleas in abatement or otherwise, filed to those indictments?

A. I understand they are pending on pleas in abatement, on the issue presented by the pleas in abatement.

Q. Do you know what the issues are as presented by those pleas in abatement? A. Some of them.

Q. What are those pleas in abatement based upon?

A. Well, in a general way, I might say they are based on alleged misconduct and irregularities of the Government attorney or members of the Grand Jury, and upon the admission of incompetent testimony.

Q. Now, at the time when these indictments were found, what do you know concerning their being based upon the testimony of Griswold?

A. Well, I don't know anything; I supposed Griswold probably testified.

(Testimony of Edward B. Howell.)

Q. You did not know as a matter of fact that he had testified, did you?

A. No, I didn't. I inferred that from the fact that this affidavit was called for.

Q. Now as a matter of fact, this affidavit that has been identified as Exhibit "E", what was the purpose for which it was obtained?

A. Well, I might say in a general way, it was for the purpose of putting Mr. Griswold on record for what we considered to be the truth in the case.

Q. In other words, it was for the purpose of pinning him to the truth?

Mr. MAYNARD.—Now, brother Bickford, I object again to Mr. Bickford testifying on both sides of this case. I object to the question as leading, and as not proper redirect examination, and as clearly and manifestly in violation of all the laws governing the introduction of evidence. He has no right to testify in that way.

A. Well, I would be inclined to say no to that, because I don't believe anybody or anything could pin Mr. Griswold to the truth.

Q. Counsel has asked you concerning a conspiracy existing between the attorneys for Mr. Cobban and Mr. Cobban. I would ask you to state to the Court, now, what you know concerning a conspiracy between the attorneys of Mr. Cobban and himself for the purpose of preventing the finding of indictments by the Grand Jury.

(Testimony of Edward B. Howell.)

State all the facts within your knowledge concerning a conspiracy of that kind.

A. There was no conspiracy, absolutely none. There was no effort whatever to prevent Mr. Griswold from appearing before the Grand Jury and any Government officer and telling the truth. For myself, I recognized that it could not be, and should not be done. The Government had a right to proceed with any investigation it might choose to have. Our only hope was that Mr. Griswold, who had informed the officers of the Government for the purpose of compelling Mr. Cobban to compromise the suit, that when the suit was compromised, his hostility to Mr. Cobban would cease, and that he would state the simple truth in regard to those transactions relative to the acquisition of timber.

Recross-examination

Q. (By Mr. MAYNARD.) Now, Mr. Howell' in addition to your being an attorney for Mr. Cobban at that time, were you not also his business partner?

Mr. BICKFORD.—We object to that as not proper cross-examination and as concerning something which has not been touched upon in the examination in chief.

A. I was interested as a stockholder of the R. M. Cobban Realty Company, but was not interested in any way in these timber lands which are the issue in this case, and never had any interest whatever in these timber lands.

Q. Then, if you were not technically in law a partner

(Testimony of Edward B. Howell.)

of Mr. Cobban, you were associated with him in business, were you not?

A. Yes, I was.

Q. And this in addition to being his attorney?

A. Yes.

Q. Now, then, isn't this the truth and the case, Mr. Howell, that your paying at the time and under the circumstances that you did to Mr. Griswold $1500, when your client had before the institution of the suit said that he did not owe him a cent—wasn't it solely for the purpose of trying to buy Mr. Griswold off, and in case he was subpœnaed to testify before the Grand Jury, that he would not tell the same story that he had in his affidavit that he had given before Mr. Zevely and the same story that he told in his testimony in the civil suit?

A. There was no desire on my part to have Mr. Griswold tell anything but the truth before the Grand Jury or before any Government officer. I did believe that if he did tell the truth, that he would probably tell a very different story from what he had in his affidavit before Mr. Zevely.

Q. Now, Mr. Howell, do you know of any testimony that Mr. Griswold gave before the Grand Jury and of any testimony which he has given upon this hearing which is not absolutely consistent in all respects with the testimony which he gave upon the civil suit and which he gave in the affidavit which he made before Mr. Inspector Zevely?

Mr. BICKFORD.—We object to that for the reason

(Testimony of Edward B. Howell.)

that the witness has already stated that he knows nothing about the testimony given either before Zevely nor has he ever made any comparison of that testimony with the testimony given in the civil suit; therefore the witness is not in a position to answer the question. I also object because it appears that the witness knows nothing about the testimony that was given before the Grand Jury, and for that reason he is not in a situation to make a comparison.

Mr. WALSH.—Also because the question is not proper cross-examination and it is irrelevant and incompetent

A. Of course, I know nothing about his testimony before the Grand Jury. I read theaffidavit that he gave or a copy of his testimony before Zevely, and I heard his testimony in the trial of the cause of Griswold against Cobban.

Mr. WALSH.—The question asked you is to institute a comparison between that testimony and the testimony given before the Grand Jury and this hearing.

The WITNESS.—I have not read his testimony on this hearing and do not know what he has testified to.

Q. I hold in my hand a volume of testimony, Mr. Griswold's testimony that was given months ago upon this hearing, and I ask you if you have not read this testimony over?

A. Oh, no, I have not read a word of it, beyond a statement or two which was shown me this morning,

(Testimony of Edward B. Howell.)

where Mr. Griswold claimed he was locked into Marshall & Stiff's inner office, which is not true. If the door was locked, he was not locked in in any sense, and as far as instituting a comparison between his testimony before Zevely and his testimony at the trial and his testimony before the Grand Jury, I could not do that without having the testimony in each case before me.

Q. And you know of nothing of your own knowledge that is inconsistent in the testimony which Mr. Griswold has given upon any of these occasions, except this affidavit which you obtained from him for the purpose of holding him as you testified yesterday, of having a hold on him.

Mr. BICKFORD.—We object to that, because the witness has already answered the question, because it is irrelevant and because it calls for a conclusion of the witness and because it is not proper cross-examination.

A. Well, I don't know the testimony that you refer to on these other occasions, and hence, of course, I can not say that I know of any inconsistency of my own knowledge. I do know this: that in giving this affidavit it was given most cordially and willingly by Mr. Griswold, and he asserted repeatedly that it was every word of it true, and I believed him at that time.

Q. Now, let me ask you this question. Don't you know as well as you know anything, that if there had been anything inconsistent in the testimony given by Mr. Griswold on the civil suit or any affidavit that he made before Mr. Inspector Zevely, that the acute and learned

(Testimony of Edward B. Howell.)

lawyers that represent the defendant in this case would have called your attention to it; don't you know that?

A. Well, I have a large respect for the acuteness and learning of the lawyers for the defendant, but I cannot answer whether they would consider it necessary to call my attention to it or not.

Mr. BICKFORD.—You did not know, I suppose, that we had been refused the testimony that was given before Mr. Zevely by the learned gentlemen on the other side, did you?

The WITNESS.—I think I stated that we had received a copy of this testimony before Zevely but I have never seen the original myself.

Mr. MAYNARD.—One of the things that were delivered over at the meeting, was a copy of the testimony of Mr. Griswold given before Mr. Zevely, and which you now have in your possession.

Mr. BICKFORD.—I beg your pardon.

Mr. WALSH.—If there is any question about it.

Q. (By Mr. MAYNARD.) Now, Mr. Howell, just one more question: on these pleas in abatement that you have referred to. You also remember appearing in behalf of the defendant and your client, Mr. Cobban, at a hearing in Helena a few weeks ago, do you not?

A. Yes.

Q. And you remember being sworn as a witness there? A. Yes.

(Testimony of Edward B. Howell.)

Q. And you remember the fact that one or the charges were preferred, and as one of the reasons why the informations had been rturned into the Court by the Grand Jury of the Federal Court, was the fact that as a representative of the Government, undertook to cross-examine you when you appeared before the Grand Jury as the attorney for Mr. Cobban and tried to induce them not to return indictments. You know that, don't you?

Mr. BICKFORD.—We object to this for the reason that the imputation cast by counsel on the witness that he appeared before the United States Grand Jury it unfair and uncalled for and not sustained either by the testimony in this case or by the facts disclosed from any source, and we further object upon the ground that it is irrelevant and immaterial, and that the question consists almost wholly of conclusions drawn by the counsel from his inner consciousness and not from any testimony and that the question is not proper cross-examinatio.

A. My testimony on that occasion was concerning an effort you made before the Grand Jury to qualify me as an expert to testify upon a question of law.

Redirect Examination.

Q. (By Mr. BICKFORD.) Did you appear before the United States Grand Jury as the attorney for Mr. Cobban?

A. Why, no, not in that capacity as I understand it,

(Testimony of Edward B. Howell.)

although I had been the attorney for Mr Cobban in this action.

Q. Was this in pursuance of any professional engagement that you had with Mr. Cobban that you were to appear before the Grand Jury?

A. No, it was not; certainly that was no part of my employment. As I understood it, Iaws subpœnaed as the business associate of Mr. Cobban who had the custody of this affidavit, and one of the things that surprised me before the Grand Jury was the extent to which my examination was carried. It was certainly carried further than was necessary, since, after the introduction of the affidavit—why, that was all that was necessary for me to testify to.

Q. The subpœna served upon you was an ordinary subpœna duces tecum, I presume?

A. Yes, sir.

Q. And you appeared in response to the command of that subpœna, did you not? A. I did.

Q. Well, Mr. Cobban had not employed you to go up there, had he? A. No.

Q. He paid you no fee for appearing before the Grand Jury? A. Not at all.

Q. Then what have you to say as to appearing befor the United States Grand Jury as the attorney for Mr. Cobban?

Mr. MAYNARD.—Are you cross-examining your own witness?

(Testimony of Edward B. Howell.)

Mr. BICKFORD.—I, am yes.

Mr. MAYNARD.—Then I object to the confession on the part of counsel that he is attempting to cross-examine his own witness; who is certainly not adverse.

A. Well, I was the attorney for Mr. Cobban, but I did not appear as the attorney for Mr. Cobban as I understand it.

Recross-examination.

Q. (By Mr. MAYNARD.) But you were certainly, as the business associate of Mr. Cobban and as his attorney in the very matter that was being investigated, were anxious to have Mr. Cobban's position so stated before the Grand Jury that they would refuse to indict him, were you not?

Mr. WALSH.—Objected to as not proper cross-examination and immaterial and irrelevant.

A. Oh, of course, I did not want to see the Grand Jury indict him. I had evesy feeling of friendship for Mr. Cobban and confidence in him, that whatever he had done, even if it be a technical violation of the law, was certainly not an intentional one.

EDWARD B. HOWELL.

Subscribed and sworn to before me this 24th day of April, 1902.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

SAMUEL DINSMORE, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Dinsmore, where do you reside?

A. Missoula.

Q. How old are you? A. Thirty-five.

Q. What business are you engaged in?

A. Real estate.

Q. What business were you engaged in during the year 1899? A. Real estate business.

Q. What was your firm name at that time?

A. Cobban & Dinsmore.

Q. Who was the Cobban of the firm of Cobban & Dinsmore? A. R. M. Cobban.

Q. Now, I wish you would state about what the character of the business was that the firm was doing during that year?

A. Buying and selling real estate, loaning money, etc.

Q. What character of real estate were you buying and selling?

A. All kinds. We sold what was known as the Orchard Homes, five acre tracts.

Q. What are those?

A. Property divided into five and ten acre tracts and sold to different parties.

Q. And what significance has the term Orchard Homes in this connection?

(Testimony of Samuel Dinsmore.)

A. Well, it is planted to orchards.

Q. The five acre tracts are planted to orchards, with trees? A. Yes, sir.

Q. Where were they situated?

A. At Missoula.

Q. Right in the city?

A. Well, close to the city, within two miles of the city.

Q. Now, what other kind of real estate did you handle?

A. Well, we handled farms and timber lands.

Q. Ranches, you mean? A. Yes, sir.

Q. Bought ranches and sold ranches?

A. Yes, sir.

Q. What else? A. Timber, mines.

Q. Any city lots? A. Yes, sir.

Q. Where? A. In Missoula.

Q. And what did your money loaning business consist of, on what kind of property did you loan money?

A. Why, all kinds, farms and some mines.

Q. Now, what direct connection, if any, Mr. Dinsmore, did you have with the acquisition of timber lands up the Blackfoot River during the summer of 1899? A. Very little.

Q. Who looked after that part of the business?

A. Mr. Cobban.

Q. Where was your office at that time?

A. Part of the time it was in what is known as the

(Testimony of Samuel Dinsmore.)

Roberts Block in Missoula and the rest of the time it was in the Higgins Bank Building.

Q. When did you move into the Higgins Bank Building?

A. I don't remember the date; I think it was in February, 1900.

Q. I was asking you about the year 1899.

A. Eighteen ninety-nine, well, I don't remember the date we did buy it. Mr. Cobban and I bought the building.

Q. You bought the Higgins building?

A. Yes, sir.

Q. Now, what arrangement, if any, did you personally make with Mr. Griswold or with anyone else who may have been in the employ of your firm with reference to the acquisition of timber lands in the Blackfoot that year? A. None whatever.

Q. What arrangement, if any, did you make with any other parties who had made entries or were to make entries or were about to make entries on these timber lands? A. I never made any.

Q. Do you remember having seen Mr. Griswold in the office at any time during the year 1899?

A. Yes, sir.

Q. How often, Mr. Dinsmore?

A. I can't tell.

Q. Who transacted the business with him?

A. Mr. Cobban.

Q. Do you remember of having overheard any in-

(Testimony of Samuel Dinsmore.)

structions given by Mr. Cobban to Mr. Griswold concerning his actions with reference to the timber lands?

A. Why, I might have heard something.

Q. What were the instructions you overheard Mr. Cobban give Mr. Griswold with reference to the acquisition of lands acquired by parties under the Timber and Stone Act?

Mr. MAYNARD.—I object to that question because the witness has simply said that he might have heard something, and there is no basis for the assumption on the part of counsel that any instructions were in fact given, and therefore, this question is leading, and there has no basis whatever been laid for its being asked.

A. I know that we were in the market for all good timber with good titles, and while I heard them talk it over lots of times and have been in the office at the time, at the same time I did not give it the attention that I did to my part of the business. I know that it was thoroughly understood that—

Mr. MAYNARD.—Wait a minute. It is not proper for you now.

The EXAMINER.—Well, you put your objection. You are addressing the witness.

Mr. MAYNARD.—Very well. I object to the witness voluntteering his understanding, as not responsive to the question that has been put to him.

Mr. WALSH.—Yes, sir, we agree to that. We made the same objection repeatedly to the counsel for the

(Testimony of Samuel Dinsmore.)

Government asking witnesses as to the understanding, and we consent now that the witness may be interrupted and not tell his understanding about anything. He was not asked about his understanding, but as to whether he heard anything instructions given by Mr. Cobban to Mr. Griswold and what those instructions were with reference to the matter.

Mr. MAYNARD.—He has answered that.

The EXAMINER.—No, he has not answered that.

A. The instructions were to buy all timber lands that was a good buy with a good title.

Q. How long have you known Griswold?

A. About three and a half or four years.

Q. Now, do you remember ever having heard any instructions given by Mr. Cobban to Mr. Griswold with reference to the making of agreement to purchase prior to the time that final proof had been made?

A. I never did, no, sir.

Q. Where has Griswold lived during the time that you have known him?

A. He lived in the Blackfoot country part of the time and the rest of the time in Missoula.

Q. Do you know what his general reputation is in the vicinity in which he lives for truth, honesty and integrity? A. Yes, sir.

Q. What is it? A. Very bad.

Q. Do you know one L. A. Wells, who lives up the Blackfoot country somewhere, Mr. Dinsmore?

A. Yes, sir.

(Testimony of Samuel Dinsmore.)

Q. Do you remember of his having been in your office at any time during the year 1899?

A. Yes, sir.

Q. I wish you would state what, if any, conversation you ever had with Mr. Wells in which conversation he stated to you that he had heard that Mr. Cobban had said that he, Mr. Cobban, had received from someone a letter containing obscene language, which Mr. Cobban had said had been written by Mr. Wells?

A. We never had such a conversation as that.

Q. What have you to say as to Mr. Wells ever having talked to you about any statements Mr. Cobban may have made against Mr. Wells in any way?

A. We never had any conversation regarding it at all.

Q. Do you know one William Sparks, Mr. Dinsmore? A. Yes, sir.

Q. In the course of the testimony given by Mr. Griswold, he stated something to the effect that you had said to him that this man, Sparks, was working for the defendant, W. A. Clark.

A. I never told him anything of the kind.

Cross-examination.

(By Mr. MAYNARD.)

Q. What is your name?

A. Samuel Dinsmore.

Q. You are thirty-six years old?

A. Thirty-five.

(Testimony of Samuel Dinsmore.)

Q. How long have you lived in Missoula?

A. Since 1898; I lived in the Bitterroot, though; I have been operating in the Bitterroot about seven years.

Q. You say you lived in Missoula since 1898?

A. Yes, sir.

Q. About four years, then? A. Yes, sir.

Q. Where did you live before moving to Missoula?

A. Florence part of the time and part of the time at Hamilton. I have got a ranch at Hamilton and also at Florence, and I was in business here for a while and lived in Butte from 1894 for about two years.

Q. You say that you were in business in Hamilton and Florence? A. I had a ranch here.

Q. You mean two farms?

A. Yes, sir, orchards, rather.

Q. Before moving to Missoula? A. Yes, sir.

Q. And before moving down into the Bitterroot country at Hamilton and Florence, you lived in Butte?

A. Yes, sir.

Q. How long did you live here?

A. I think about two years.

Q. What did you do here?

A. I was in the coal business.

Q. Where did you live before that?

A. Salt Lake City.

Q. What did you do there?

A. Real estate business.

Q. How long did you live there?

(Testimony of Samuel Dinsmore.)

A. I lived there about five years.

Q. Where did you live before that?

A. Lincoln, Nebraska, for about eighteen months.

Q. Then where? A. Iowa.

Q. Then where?

A. That is all there is to it.

Q. Were you acquainted with Mr. Cobban when you lived here in Butte? A. Yes, sir.

Q. Are you related to him in any way?

A. No, sir.

Q. Were you engaged in business with him in any way with him here?

A. No, sir. I had my office in his office.

Q. You had your desk room in his office?

A. Yes, sir.

Q. For how long?

A. About eighteen months, I should judge.

Q. About all the time that you were here?

A. Yes, sir, pretty near.

Q. Were you engaged in no other business when you move to Hamilton except your orchard?

A. Not when I moved to Hamilton.

Q. Or any time while you were there?

A. I was manager of the Aetna Savings and Loan Company; I came here as manager of the Aetna Company.

Q. Came where? A. To Butte.

Q. I didn't say anything about Butte; I said when you went to Hamilton? A. No.

(Testimony of Samuel Dinsmore.)

Q. How long after you went to Missoula before you formed a partnership with Mr. Cobban?

A. At the time I went to Missoula?

Q. You went there for that purpose?

A. Yes, sir.

Q. To go into business with him? A. Yes.

Q. That was in 1898? A. Yes.

Q. And you were associated with him in business in 1898, and 1899 and 1900 and 1901, were you not?

A. No, sir, we dissolved partnership in August, I think, of 1900.

Q. When did he sell his block to you, his interest in the block? A. It was January, 1901.

Q. You are not associated with him in business at all in any now? A. None whatever.

Q. And have not been since you dissolved partnership in August, 1900? A. No, sir, not at all.

Q. But you were engaged in business during the whole season of 1899 and extending into 1900 as far as August? A. Yes, sir.

Q. Now, was your partnership of a limited or general character? A. General character.

Q. Was this land deal with the defendant in this case one with which you were interested as a partner?

A. Yes, sir.

Q. So, from the beginning to the end you were interested in it as a partner?

A. Yes, sir, up until the time that we dissolved partnership.

(Testimony of Samuel Dinsmore.)

Q. Had you settled on this Clark deal at the time you dissolved? A. Yes, sir.

Q. So you know a good deal about it, then?

A. Not very much; not as much as a person might think, being in partnership. Mr. Cobban handled that part of the business, and I handled the other. I was east during 1900 for quite a little while, and know but very little about the timber business.

Q. Were you in Missoula during the spring and summer and fall of 1899? A. Yes, sir.

Q. You were there most of the time, were you not?

A. Off and on, yes, sir.

Q. You were not sick?

A. I don't remember of it.

Q. And your business called you to your office, Cobban & Dinsmore, every day, did it not?

A. Yes. I was up the valley a great deal, and in Butte a great deal.

Q. Was this ignorance which you have in regard to the details of this Blackfoot country deal exceptional?

A. I don't know what you mean by that.

Q. Why don't you understand that?

A. I don't know just what you mean by the ignorance part of it.

Q. I mean you were associated together as partners in the general real estate business? A. Yes, sir.

Q. As a partner did you not usually know about the details of the partnership business? A. Yes, sir.

(Testimony of Samuel Dinsmore.)

Q. Why, then, did you not know about the details of this business?

A. For the same reason that Mr. Cobban did not know anything probably about the details of the department that I had. I had the utmost confidence in Mr. Cobban and I think he did in me, and we decided to handle these separate departments separately. I handled the ranches and the selling of the Orchard Homes and those things, and Mr. Cobban handled the timber business and the mines.

Q. Mr. Dinsmore, I understood you to say just a moment ago that you usually understood about the details of the partnership business?

A. Not the little details, no, sir.

Q. Do you regard this buying of nearly two hundred million feet of pines as an insignificant matter, of which you have little or no knowledge?

A. If I did not have confidence in Mr. Cobban's ability and honesty I would not have been in partnership with him.

Q. When you made that explanation of your having a general knowledge, why did you leave out this entire Blackfoot country deal that you didn't know the little details about?

A. I didn't leave it out. I knew nothing about the details. There were hundreds of transactions made in the office that I knew nothing about and there is that many, probably, that Mr. Cobban knew nothing about. the details of these things. We might have talked it over

(Testimony of Samuel Dinsmore.)

after it was made and may be before. I never was up the Blackfoot in my life any further than Bonner.

Q. What I want to know now is, during this extended dealings between Mr. Cobban and Mr. Griswold and all of these entrymen and entrywomen that were coming to your office, certainly every week during the year, did you or did you not know of what was going on?

A. No.

Q. You did not know what was going on?

A. I did not know; many of them came there that I never met them at all; they came in the office and I was busy and never met them.

Q. Did you know of the fact that Mr. Cobban had entered into a contract in writing with Mr. Griswold?

A. I did not, no, sir.

Q. You did not know that?

A. No, sir, I did not; I never knew it till afterwards.

Q. How long afterwards?

A. I don't remember just exactly.

Q. What do you mean by the use of the word "afterwards"—after what?

A. Well, I heard it, Mr. Cobban, I think, told me after, some time after he had entered into a contract with Griswold, he told me of the contract, but the nature of it I could not recall now. I probably knew then, but I cannot recall the matter now.

Q. When did Mr. Cobban tell you this?

A. I don't remember the exact date; I don't remember when it was.

(Testimony of Samuel Dinsmore.)

Q. When you used the word "afterwards," what do you mean; after what?

A. I suppose after he had made the contract with him.

Q. He told you after he had made the contract?

A. Yes.

Q. And didn't he tell you what the subject matter of the contract was?

A. He might have, but I don't remember it.

Q. You now come here and swear that you don't remember at all about the subject matter of the contract that Mr. Cobban told you he had entered into with Griswold? A. I do.

Q. Didn't you know when you saw Mr. Griswold around your office so many times during that season what he was doing? A. I did not know exactly.

Q. Did not know exactly?

A. No, sir. I knew he was working for Mr. Cobban.

Q. What was he doing for Mr. Cobban?

A. I could not tell you exactly; he was buying timber, working up the Blackfoot.

Q. Who was he buying timber for?

A. Mr. Cobban and myself.

Q. Who was Mr. Cobban buying timber for?

A. For himself.

Q. When did you first learn that this timber that Mr. Cobban was buying through Mr. Griswold was sold to the defendant in this case?

A. Well, in the first place the timber—when we were figuring on the timber someone told Mr. Cobban and Mr.

(Testimony of Samuel Dinsmore.)

Cobban told me there was lots of timber in the Blackfoot country that the Big Blackfoot Company did not own. Mr. Cobban felt that timber was going higher all the time and that we could sell it. I think the first parties that we expected to sell to was parties in Chippewa Falls, Wisconsin. I know he told me at different times after taking this up, that he had corresponded with different people, and that Mr. Kendall had an option on the timber at one time or part of it, and I know the Largey estate did buy some timber.

Q. Will you now be kind enough to answer my question?

The EXAMINER.—Read the question.

(Question read.)

A. I don't remember; I suppose about the time that it was sold; I don't even know the day nor the month.

Q. Who told you that?

A. I suppose Mr. Cobban.

Q. Don't you know he did?

A. I can't be certain.

Q. When did he first speak to you in regard to selling this timber to the defendant?

A. I say I don't remember the date.

Q. Don't you remember where it was?

A. No, I don't; probably in the office; it may have been outside of the office; it may have been up at his home or it may have been when we were out driving or somewhere else; I can't recall.

(Testimony of Samuel Dinsmore.)

Q. You know as a matter of fact that he did sell this timber to the defendant?

A. I think he did, yes, sir; he sold some of it.

Q. What part of it?

A. I don't know that; as I say, I never was up there in my life; I never was up the Blackfoot, and I don't know where one claim lies from another.

Q. Can't you recall anything about the conversation that you had with Cobban in regard to his prospects that he had or what he was going to do with the defendant in this case in this matter?

A. Why, he has talked over with me that we could probably sell the timber to Clark, part of it, the same as he has about selling to these different parties. We had a great many people that we expected to sell it to, but we did not sell it to them.

Q. Did you not know of the fact of Mr. Cobban's coming here to Butte from Missoula to see the defendant in regard to this matter? A. I think so, yes, sir.

Q. Didn't you know of the fact of McLaughlin's meeting him in the office?

A. McLaughlin has been in the office lots of times.

Q. Didn't he talk with you in regard to the matter?

A. I don't think he ever did; he probably mentioned it in an offhand way. Mr. McLaughlin is in my office probably two or three times a week now; he comes in the same as a whole lot of other people.

Q. Now, you don't mean to say, Mr. Dinsmore, that you, as a general partner in this business and having this

(Testimony of Samuel Dinsmore.)

large matter under consideration, that you did not know all about what was going on, do you?

A. I mean to say that probably at the time that this deal was going on, some two or three years ago, I might have known that day the exact conversation, and a great many of the conversations that we had and the talks of different business matters might have passed out of my mind in fifteen or twenty minutes. As I say, I know nothing about any timber deals, because my time was taken up with other matters. Mr. Cobban was handling that solely, and I did not meet half a dozen people, I suppose maybe not that many, that had anything to do with timber, and those that I did know, I did not know them from the fact that we bought timber of them.

Q. Now, while that may be all true, and you were attending to your part of the business and Mr. Cobban was attending to the details of this large business enterprise that you and he had entered into with Senator Clark, while that may all be true, do you mean to tell me that you did not know about the main subject matter of the business?

A. Why, I suppose I did then, but to recall that now, I could not. I could not tell you just exactly what he said or what I said or anything about it.

Q. I just asked you for those details.

A. You asked me for the conversation that we had.

Q. What I am asking you now about is if you say that you might have known at the time of a particular subject matter of the contract; didn't you know of the fact that

(Testimony of Samuel Dinsmore.)

your firm, acting through Mr. Cobban, one of the partners, had been employed by the defendant in this case to buy up all this timber in the Blackfoot country?

A. No, sir, I don't; I absolutely know that Mr. Cobban was not the agent of Mr. Clark or anyone else.

Q. How do you know that?

A. I feel satisfied of it, because if he had been, he certainly would have mentioned that to me.

Q. Don't you know, Mr. Dinsmore, that the money that came to buy this timber land came from Senator Clark?

A. I do not, no, sir; I know that I helped to borrow some of it myself to pay for timber and not from Clark, either.

Q. Will you swear that there was not money loaned, which were called loans, made by Clark to your firm to enable you to buy this land?

A. I don't think there was ever but one loan made.

Q. But one loan?

A. Yes; I think that at the time we bought the block, probably we borrowed some money from Clark.

Q. Don't you know whether you did or not?

A. I think we did.

Q. Why do you say probably you borrowed money from Clark if you know that you did borrow money from Clark? Why do you say you think you borrowed money from Clark?

Mr. BICKFORD.—We object to the effort of counsel, trying to intimidate and browbeat the witness. The wit-

(Testimony of Samuel Dinsmore.)

ness is answering readily enough. We don't think it is fair to the witness or to counsel himself.

Q. Answer the question. Why did you use the word "probably"?

A. I don't know just exactly why I did use it.

Q. Don't you know as a matter of fact that there was not one straight sale of any of those timber lands to Clark or any timber lands that you had bought from your own independent money except the first one in July?

A. I don't know anything of the kind, no, sir.

Q. Will you swear that that was not so?

A. I know that every sale was a straight deal. Anybody else, if they had the money, could have bought it just the same as W. A. Clark.

Q. If you were not attending to the details and knew nothing about the working out of this contract or the deals between Cobban and Mr. Clark, how are you able to swear to that?

A. For the reason simply that Mr. Cobban had on different occasions, when he was talking the matter over, stated that we had so much timber, and that we wanted to get a buyer. I have talked to several people myself; I was the one that talked to Mr. Kendall, and I sold the timber to the Largey estate, that they bought.

Q. Don't you know that the money that came for the purchase of these timber lands came from Mr. Clark?

A. It did not, no, sir. The reason I know that is, because I signed the note to other people myself.

Q. Didn't you hear of any arrangement made by which

(Testimony of Samuel Dinsmore.)

Mr. Clark was to loan up to the amount of seventy-five per cent? A. I never did, no, sir.

Q. To the amount of seventy-five cents a thousand, that you were to have the money on that, and that the balance of fifty cents per thousand was to be paid later?

A. No.

Q. You never heard of that?

A. No, sir. If it was so, I might have heard of it at the time, but I don't recall anything of the kind.

Q. And that every bit of the money that was paid for these timber lands except the lands that were sold in the first one or two deals came from Senator Clark's money?

A. I don't think so.

Q. Are you prepared to swear that all of this land in the Blackfoot country was purchased from your own means?

A. Means that we obtained, yes, sir.

Q. Now, you have just stated—tell me where you got the money from?

A. We got it at different places.

Q. Name one, now.

A. The First National Bank, the Silver Bow National Bank, the State Savings Bank.

Q. Wait a minute, don't go so fast. The Silver Bow National Bank here? A. Yes, sir.

Q. How much did you get from them?

A. I think at one time $5,000.

Q. For what purpose?

A. Mr. Cobban said he needed it to buy timber.

(Testimony of Samuel Dinsmore.)

Q. How did you borrow that?

A. On a note.

Q. Your personal note? A. Yes, sir.

Q. Do you know that that money was used for that purpose? A. I feel satisfied that it was.

Q. You know nothing about it except what Cobban may have told you? A. That is all, yes, sir.

Q. That is $5,000. Now, name the next one.

A. Well, we borrowed from the First National Bank, I remember, $10,000 at one time; I don't know but what it was $12,000; it was either $10,000 or $12,000.

Q. For what purpose was that used?

A. I suppose for the same purpose, to buy timber. There might have been some of it used in other deals that we were making.

Q. You were making a good many deals at that time, were you not? A. Yes, sir, we were.

Q. And you are not prepared to swear that that $12,000 that you received on that note from the Missoula bank was used solely for this purpose?

A. I am not prepared to say that every dollar of it was.

Q. Are you prepared to say that one dollar of it was used except as you were told by Cobban?

A. Why, I looked over the books and statements.

Q. Will your books show that $12,000 was used for what purpose?

A. I think so. I don't know whether it was that same $12,000 or not; it was deposited to our account.

(Testimony of Samuel Dinsmore.)

Q. I am asking you now as a fact, is it or is it not a fact that your books of account would show how that $12,000 that you borrowed from the Missoula bank was used?

A. I don't know as it would show the exact $12,000. There is money coming every day which is deposited to our credit. We were issuing checks every day, and that might have all been used on that, and part of it might have been used for other purposes, and the money that came in from different sources might have been used for the timber lands.

Q. As a matter of fact it might all have been used in business enterprises other than the Blackfoot country?

A. No, I don't think so; we did not have business of that size out of that.

Q. Can you state of your own knowledge as to any specific or exact amount of that $12,000 that was used in buying timber on the Blackfoot?

A. I could not any special amounts, no, sir.

Q. Then, other than the fact that your firm did borrow $12,000 from the Missoula bank, you are not prepared to say anything more definite than that, are you?

A. I don't think so, regarding the $12,000.

Q. Anything more than that you borrowed the money?

A. We borrowed the money, and I know it was checked out.

Q. And used in your business?

(Testimony of Samuel Dinsmore.)

A. Yes, sir.

Q. Now, the next one.

A. Well, we got money from the First National Bank at Butte.

Q. How much did you get from them?

A. I don't remember; probably $20,000, and probably $30,000. We were at one time, I know, owing some $48,000 to the bank.

Q. What do you mean by that, that at one time you owed that amount? A. Yes.

Q. At one particular time? A. Yes.

Q. When was that?

A. I don't remember the date.

Q. Do you remember the year?

A. Probably 1900; I think it was 1900; it was either 1899 or 1900.

Q. Have you no more definite knowledge as to that than that it probably was 1900?

A. No, sir, I have not.

Q. And do you know why you needed that money?

A. To buy timber lands.

Q. To carry on your business?

A. And to carry on our business, yes, sir.

Q. Anything else, any other source of getting money?

A. We had money coming in every day in our office.

Q. In your general real estate business?

A. Yes.

(Testimony of Samuel Dinsmore.)

Q. That would not be the amount of money that you would rely upon to make purchases of timber lands?

A. Well, I don't know; we had some pretty big accounts come in and we used it for what we thought best.

Q. Can you tell me any particular sum of money derived from any particular source that was used in buying this timber land on the Blackfoot?

A. I don't think I can, no sir, not exact amounts.

Q. Now, then, I ask you again, are you prepared to swear that all of these deeds and conveyances of Cobban to Clark were straight sales?

A. Yes, I am satisfied they were.

Q. And that when the deeds were delivered to Clark the money was paid and the transaction was ended?

A. I think so, yes, sir.

Q. And you know that?

A. I feel satisfied it was, yes, sir.

Q. Now, why do you feel satisfied, when you say that; what knowledge have you to base that opinion?

A. Only this, that Mr. Cobban was handling that part of the business, and I felt satisfied when he sold the timber to Mr. Clark and got the money, that the deal was closed, and I felt satisfied that it was all right.

Q. Now, did Mr. Cobban tell you that?

A. I suppose he did, yes, sir. I cannot recall any conversation he had, just the exact words he used, but I know it just as well as we know anything.

Q. Have you examined your books with reference to this matter?

(Testimony of Samuel Dinsmore.)

A. Why, I haven't lately, no, sir.

Q. Did you ever examine them?

A. I have, yes, sir.

Q. Your books disclosed the fact that they were straight, absolute deeds? A. Yes, sir, they do.

Q. And the transaction was closed?

A. Yes, sir.

Q. And Clark paid all the money that was called for by the deeds? A. Yes, sir.

Q. At the time of the delivery of the deeds?

A. Yes, sir.

Q. And there was no arrangement of any kind made between Cobban and Clark by which Clark was conditionally buying the land or reserving a portion of it?

A. I don't think there was, no, sir.

Whereupon a recess was taken until 2 P. M.

Saturday, April 19th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

SAMUEL DINSMORE, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Now, before recess, you said you didn't know of any loans that were made at all by Senator Clark to your firm.

A. I said I knew of one loan that was made at the time we bought the block.

Q. And that was all?

A. Well, there were others I think, probably.

(Testimony of Samuel Dinsmore.)

Q. What has refreshed your recollection since the recess was taken this morning?

A. I was talking with Mr. Cobban since, over different matters.

Q. Mr. Cobban has told you since dinner?

A. No, we were talking over other matters, different matters, speaking about that time, and I remember that loan distinctly.

Q. Well, since dinner you have had a talk with Mr. Cobban, haven't you? A. Yes, sir.

Q. And he has told you that the testimony you gave this morning that you were entirely mistaken in it.

A. No, not that, exactly.

Q. Didn't he tell you, as a matter of fact, that you got several loans from Senator Clark?

A. Yes, sir.

Q. So, that when you swore that there were no other loans obtained from Senator Clark, you were mistaken, weren't you?

A. I told you that I wasn't sure about that, all the time?

Q. The stenographer's notes show that you swore positively that no such loans were made.

By Mr. WALSH.—There has been no question asked you, Mr. Dinsmore.

Q. As a matter of fact, did you know how many thousand feet of timber Mr. Cobban bought and sold to Senator Clark? A. Yes, sir, I do.

(Testimony of Samuel Dinsmore.)

Q. And if that is so, you don't know how much money you received from Senator Clark?

A. No, sir, I do not.

Q. And you don't know whether the money was loaned by Mr. Clark, or what the arrangements were that were made, do you? A. No, sir, I do not.

Q. And when you undertook to swear positively this morning that no such loan had been made, you were mistaken, weren't you?

A. I told you at the time that I did not know exactly how it was.

Q. I know what you have sworn to, and the stenographer has taken it down. A. Yes, sir.

Q. Now, as a matter of fact, there was one hundred and fifty million to two hundred million feet of timber sold by Mr. Cobban to Senator Clark, was there not?

A. There might have been; I don't know the exact amount.

Q. And if the purchase price that Senator Clark paid was a dollar and twenty-five cents per thousand, that would aggregate nearly a quarter of a million dollars, would it not? A. I think so, yes, sir.

Q. And in buying a quarter of a million dollars' worth of timber, you state only fifteen thousand dollars was borrowed by your firm.

A. I didn't state that.

Q. You only specified twelve thousand dollars at Missoula, and he specified ten thousand dollars in

(Testimony of Samuel Dinsmore.)

Clark's bank, and he specified eighteen thousand dollars borrowed from the First National Bank at Missoula?

A. I told you that at different times forty-eight thousand dollars, at one time that we paid.

Q. Very well, but you didn't specify any of that amount that went for this purchase of timber land?

A. I cannot state just exactly whether it all went for that purpose or not.

Q. In this apple orchard addition to Missoula, or whatever you call it, you borrowed money to buy that, didn't you? A. No, sir.

Q. What is that? A. No, sir, not all of it.

Q. Well, you borrowed some money for that purpose? A. Yes, sir.

Q. Do you know how much of it you borrowed?

A. No, sir.

Q. At—it went up into the thousands of dollars, didn't it?

By Mr. BICKFORD.—We object to that, upon the ground that it is not cross-examination of any matter that was brought out upon the direct examination of this witness.

A. I cannot tell whether we borrowed it to pay for the orchard, or for the timber.

Q. And I say the money you borrowed to buy that addition went up into the thousands of dollars, didn't it?

A. Yes, sir, amounted to several thousand dollars.

(Testimony of Samuel Dinsmore.)

Q. And you had to borrow the money for that purpose? A. The larger part of it, yes, sir.

Q. Well, now then, it is true, as a matter of fact, that this money which went to buy this timber was furnished by Clark, wasn't it? A. No, sir.

Q. What is that?

A. It is not true, no, sir.

Q. How do you wish to be understood, now?

A. The timber that we bought we borrowed the money from Clark?

Q. Yes.

A. Well, we had the timber a long time before we ever borrowed money of anyone.

Q. Didn't that money come from Senator Clark?

A. Why, no.

Q. As far as you know?

A. Yes, so far as I know we borrowed the money probably of Clark, the same as we borrowed of anyone else. We borrowed the money fo. different things, and gave a mortgage. I know we gave our personal note for the money we borrowed.

Q. To Clark? A. No, sir.

Q. I thought you said when you borrowed the money from Clark, you gave a mortgage to him the same as anybody else? A. Yes, sir.

Q. How many times did you borrow money of Clark?

A. Once or twice.

Q. What is that?

A. Once or twice at least; once that I know of.

(Testimony of Samuel Dinsmore.)

Q. When was that?

A. I think it was probably in February, 1899; I don't know the exact date.

Q. What is that?

A. At the time we bought the block.

Q. Well, when were the other times?

A. Well, I don't remember.

Q. Well, was it before or after the borrowing the money for the purpose of buying the block?

A. Afterwards.

Q. How many times afterwards?

A. Probably once.

Q. Probably once?

A. I don't know the exact amounts; we borrowed money a good many times; have always borrowed money since we have been in business.

Q. And when you borrowed money of Senator Clark you gave a mortgage?

A. I remember, too, that we borrowed money of the First National Bank of Missoula, more than once.

Q. Now, Mr. Dinsmore, aren't you mistaken now in regard to the fact of Cobban's not having spoken to you at all during the entire season, as to the way that he was buying these timber lands?

A. I don't thoroughly understand the question.

Q. Now, the question is, aren't you mistaken in what you said? You testified this morning, Mr. Dinsmore, as I recollect, swore positively that during the entire season of 1899 that Mr. Cobban didn't tell you about the details of his purchase on the Blackfoot.

(Testimony of Samuel Dinsmore.)

A. No, I don't think that I said that. We talked these matters over, but the exact details, now, probably I don't remember. I cannot recall things that occurred two and one-half years ago. There were timber lands and other things that we talked over, and I couldn't state them now, any more than anything else. I know that he would buy timber lands, or buy a ranch or anything else, if there was any money in it.

Q. Didn't he tell you he had entered into a contract by which he was to furnish Clark with two hundred million feet of pine?

A. I told you this morning he never did.

Q. Never said it?

A. No, he didn't, as I stated this morning. We expected to sell it to whoever would purchase it, and I remember Mr. Cobban making a trip east, and he told me that he was going to see if he couldn't sell it.

Q. Very well; didn't he inform you at any time as to what means he was to acquire this timber?

A. I presume we talked over the buying of timber that we got title to; if the timber was in good shape and worth buying.

Q. Don't you know, and didn't you know that he was getting this timber from people that had made entries under the Stone and Timber Act?

A. No, sir, I did not.

Q. Didn't know that at all?

A. No, sir, I did not.

Q. You never heard of the Stone and Timber Act referred to during the entire season?

(Testimony of Samuel Dinsmore.)

A. I may have heard about it.

Q. Oh, well, you say you might have heard of it. You were a partner of Mr. Cobban and engaged in business with him during all of the season at Missoula, and yet you didn't know that he was acquiring land from entrymen and entrywomen under the Stone and Timber Act?

A. I supposed he had bought them after they got title to the land, but I didn't know how long they had had title, or anything of that kind. I don't believe I met any of these people particularly, and I don't think that I was ever on any one parcel of the timber land.

Q. Well, was that an accidental thing on your part that kept yourself in ignorance of what was going on?

A. I had nothing to do with it; I had my time occupied in my own part of the business.

Q. Well, then, you are able to answer the question as to whether it was accidental or intentional, this ignorance on your part?

A. I suppose it was accidental; I suppose if I had wanted to sit there, I could have sat there and talked to the people that came in there.

Q. What other men were in your employ at that time in the office? A. In the office?

Q. Yes.

A. Mr. Kilburn was working for my partner.

Q. Mr. E. E. Kilburn?

A. Mr. E. R. Kilburn.

Q. Elmer R. Kilburn? A. E. R. Kilburn.

(Testimony of Samuel Dinsmore.)

Q. Wasn't Mr. Catlin working for your firm?

A. I think he was.

Q. Don't you know whether he was or not?

A. Yes, sir, I think Mr. Catlin was.

Q. Now, I ask you again, why do you answer a question like that when you know positively that Mr. Catlin was working for you. Why do you say you think he was? A. I don't know why I did say so.

Q. I ask of you, Mr. Dinsmore, why, when you do know positively a fact, you will tell me you do not know positively and make it impossible for me to distinguish in my examination from your testimony, whether you do know positively or not?

A. It is simply a matter of speech. There are a great many of us that say we do not know a thing positively, when we may know something about it, but not enough to make a positive statement with reference to it.

Q. Well, was Major Pound working for you?

A. Yes, sir.

Q. Well, there is Major Catlin and Major Pound, and Kilburn, they were all working for you, were they?

A. Yes, sir.

Q. Well, what did Wallace P. Smith—what did Wallace P. Smith have to do with your office?

A. Wallace P. Smith was our attorney for the first year; I think it was the first year that we were in business.

Q. Did he have an office in your block?

(Testimony of Samuel Dinsmore.)

A. No, sir. He did not have an office in the block at that time; he had an office across the street in the Daly Block.

Q. When you afterwards moved into the Higgins block, didn't he have an office there with you?

A. He may have had an office in the block, but he did not have an office with us.

Q. Now, in the Cobban branch of the business, who were working with him?

A. Why, I don't know. Major Catlin was selling the Orchard Homes ranches, and he might have helped Mr. Cobban some.

Q. Well, you know he was helping him, don't you?

A. Yes, sir, he helped him.

Q. Well, now, isn't it a surprising fact, Mr. Dinsmore, that you could have been there all that season and not have heard about the deals that were going on?

A. I suppose I did hear of most of them.

Q. You suppose you did hear of most of them?

A. Yes, sir.

Q. Do you recall the names of any of the entrymen that came around to the office and afterwards conveyed to Mr. Cobban?

A. No, as I stated before, I don't believe I knew one of them, unless I knew them outside of buying land from them.

Q. Well, do you say now that Mr. Griswold, who you admit was around the office a great deal during

(Testimony of Samuel Dinsmore.)

that summer, that spring and summer, without you having any talk with him, or him telling you what he was doing? A. I don't think he did.

Q. You don't think he did? A. No, sir.

Q. Do you know a man by the name of John H. Staley?

A. I think I do; that is—yes, I know Staley.

Q. Do you know of the fact of his having made an entry under the Stone and Timber Act?

A. No, sir, I do not.

Q. Don't know that? Do you remember the fact that in the fall of 1899, that Mr. Cobban was in California? A. Yes, sir.

Q. You do remember that?

A. I don't remember the dates; I know he was in California part of the winter.

Q. Now, I will ask you if it isn't true, that Mr. Griswold, who is sitting by my side—if he didn't come into your office with Mr. Staley, for the purpose of seeing Mr. Cobban and getting money from him to come over to Helena to make the filing under the Stone and Timber Act?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination; and further it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrele-

(Testimony of Samuel Dinsmore.)

vant and immaterial, and does not prove or tend to prove any of the issues in this case.

Q. —and finding that Mr. Cobban was not there, you went to his partner, Mr. Dinsmore, who is now on the stand, yourself, and informed him of what he came there for, and that you said that that was all right, and that you would furnish the money for Mr. Staley that was necessary for him to make proof upon his timber and stone claim?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination; and further, it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. I don't remember it at all.

Q. What is that?

A. I don't remember it at all.

Q. You don't remember that?

A. No, sir; I know Mr. Griswold talked to me about the timber filings, and I told him I knew nothing about it, and he talked very little about the business to me anyway.

Q. And did you not then furnish Mr. Staley with the money that was necessary to go over there and make his entry upon the stone and timber claim?

By Mr. BICKFORD.—We object to this for the rea-

(Testimony of Samuel Dinsmore.)

son it is not proper cross-examination; and further, it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. If Mr. Staley wanted to borrow the money, I might have loaned him the money.

Q. You know of the fact of Mr. Staley afterwards conveying the claim to Mr. Cobban, do you not?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination, and further it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. I do not.

Q. Now, in order that we may have no difficulty about fixing the identity of Mr. Staley, who is this Mr. Staley? A. I think he is a carpenter.

Q. You think he is a carpenter? A. Yes, sir.

Q. Living in Missoula?

A. I am not sure whether he is a carpenter or not. I think Mr. Staley worked for me down in the Orchard Homes.

(Testimony of Samuel Dinsmore.)

Q. Well, you are mistaken in the Staley, Mr. Dinsmore. I am referring to Mr. Staley who lives in Indiana, and who is a nephew of Mr. Griswold.

A. I remember him very well, now.

Q. You remember him now? A. Yes, sir.

Q. If you remember him very well, with that remembrance in your mind, I will renew the question I just asked you?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination, and further it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. I don't think I ever loaned Staley any money to go to Helena. I have loaned him some money, however.

Q. You what?

A. I have loaned him some money and I haven't got it yet.

Q. How much money did you loan him?

A. I think it is twenty-five dollars.

Q. Well, that is about the price that you had loaned to the entrymen and entrywomen that came there to Missoula, isn't it?

A. I never loaned any money to entrymen or entrywomen.

(Testimony of Samuel Dinsmore.)

Q. Don't your books show that that was the average amount of the loan?

A. I don't know anything about it.

Q. What is that?

A. I don't remember anything about it; I don't remember loaning them anything.

Q. In any examination that you may have have made of the books did you never see any entries there, with reference to loans to different people?

A. I may have.

Q. And to persons that made entries under the Stone and Timber Act?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination, and further it is irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Well, if you had made this investigation you would remember, wouldn't you?

A. I don't think so.

Q. If the books did show it you would remember, wouldn't you? A. I don't think so.

Q. Well, why wouldn't you remember?

A. Well, there is too many entries; there are a thousand entries on our books, and it is two years and a half since that time, and I couldn't tell any one of them; I couldn't tell my personal account.

(Testimony of Samuel Dinsmore.)

Q. Do you know when you loaned this money to Mr. Staley?

By Mr. BICKFORD.—We object to this for the reason it is not proper cross-examination, and further it is irrelevant and immaterial, the name of John H. Staley not appearing in the bill of complaint as one of the entrymen whose entry is complained about in the bill of complaint herein, and it is therefore irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

A. No, sir, I do not; he was supposed to be a horse trainer, and he had one of my horses, training it; I think it was in the fall. I think I bought this horse in July, and it was some time after that.

Q. July, 1899? A. July, of 1900.

Q. What is that?

A. 1900, I think it was.

Q. Well, you didn't know anything about it, did you, when you loaned this money to him?

A. No, I couldn't tell you anything about it.

Q. And it might have been just at the time Mr. Staley came over to Helena to make his entry?

A. It might have been, I couldn't say now as to that.

Q. It might have been the day that the deed was made, don't you think?

A. It might have been that day or the day afterwards.

Q. And you won't swear but what Mr. Staley did convey the land that he entered to Mr. Cobban at that time?

(Testimony of Samuel Dinsmore.)

A. No, sir, I will not.

Q. Do you know of any men or women conveying land to Mr. Cobban?

A. Some of them, perhaps most of them.

Q. What is that?

A. I know he must have bought timber from somebody.

Q. Well, did you have any personal acquaintance with any of them? A. I think I did.

Q. Can you name one?

A. To be absolutely certain, I don't believe I could, to know whether they did or not.

Q. Do you know Thomas Pelkey, of Missoula?

A. I don't recall him, no, sir.

Q. What is that?

A. I say I don't recall him.

Q. You have no acquaintance with him?

A. I may know him, and not know his name;that is, I may not be able to associate them both together. I know lots of people, and know their names, but I cannot associate the two together. There is a man by the name of Thomas Pelkey, and he lives up in the Blackfoot country, or in Missoula, I don't know which.

Q. That is all the knowledge you have on the subject, is it? A. Yes, sir.

Q. You have heard that there was such a man as Thomas Pelkey, haven't you?

A. I have heard the name, yes, sir.

Q. Do you know another one of your fellow-townsmen by the name of Mr. B. Frank Chattin?

(Testimony of Samuel Dinsmore.)

A. I know Frank Chattin, yes, sir.

Q. Did you have any dealings with him in regard to the conveyance of this land to Mr. Cobban?

A. No, sir, but I have had lots of dealings with Mr. Chattin.

Q. What does he do?

A. He hauls wood in the winter time; he has furnished us wood for the block.

Q. Do you know of his having owned any property, real or personal property, in the year 1899?

A. He owned real estate.

Q. Do you know anything about it?

A. I know the place that he owned.

Q. What is the place?

A. It is a little orchard, but how many acres he has got, I don't know. He has a brother, and him and his two brothers own the real estate together; that is my recollection about it.

Q. How much it is worth and how much they paid for it, you do not know, do you? A. No, sir.

Q. I won't go through this list of people in the bill of complaint, outside of the few that live in your town.

Q. Do you know Mr. Leonard Barrott?

A. No, sir, I do not.

Q. Did you ever hear of him?

A. I know Barrotts, but I don't know whether it is Leonard Barrott or not; I have heard of them.

Q. That is all you know of Leonard Barrott?

A. Yes, sir.

(Testimony of Samuel Dinsmore.)

Q. Do you know Charles H. Moss? A. Yes, sir.

Q. Is he the crippled peddler? A. Yes, sir.

Q. Do you know of his having owned any real estate of any kind, or any property sufficient to raise money enough to buy one hundred and sixty acres of government land?

A. I do not; I know he has a father, and I know he and his father live on this place.

Q. What kind of a place is it?

A. It is a pretty nice little place.

Q. How large is it?

A. I couldn't tell you; may be ten acres and may be twenty.

Q. Do you know what interest Moss has in it?

A. Charlie?

Q. Yes. A. No, sir.

Q. Don't know anything about what his interest in it, or whether it is incumbered or not?

A. No, sir, I do not; I am satisfied it is unincumbered.

Q. Do you know these Dodds?

A. I know them when I see them, but I wouldn't know one from the other; I wouldn't know their names.

Q. Do you know from your knowledge of them, if they have sufficient money with which to take up a timber claim? A. I couldn't tell you.

Q. And you don't know of any that they had, do you?

A. No, sir, I do not.

Q. Do you know John L. Deering? A. No, sir.

(Testimony of Samuel Dinsmore.)

Q. Do you know John Saleen? A. No, sir.

Q. Do you know Charles C. Snyder?

A. Yes, I know Charles Snyder.

Q. Where is he now? A. I don't know.

Q. Where was he when you last heard of him?

A. He was in Missoula, the last I heard of him.

Q. When was that?

A. About a year ago, I don't remember the exact date.

Q. Is he there now? A. I don't konw.

Q. Did you ever hear of his having left Missoula?

A. No, sir.

Q. You haven't seen him for a year or two, have you?

A. I don't remember when I have seen him.

Q. Do you know Frank B. Arey?

A. No, sir, I do not.

Q. If there is one person in this bill of complaint that you know of, I would like to have you mention him.

A. In what?

Q. If there is one person in this bill of complaint, or one entryman or entrywoman, in the bill of complaint, that you know, I would like to have you mention them.

By Mr. BICKFORD.—We submit, if your Honor please, that the question is improper, and we object to it upon the ground that the bill of complaint has not been submitted to the witness, and the witness has had no chance to ascertain the fact whether he knows any of them or not, and the witness would hardly be compelled to state facts concerning the bill of complaint

(Testimony of Samuel Dinsmore.)

and the contents thereof, without having first examined it.

By Mr. MAYNARD.—I assume that Mr. Dinsmore is as familiar with this matter as is his partner, Mr. Cobban, and that he knows all about it.

By Mr. WALSH.—We submit to the Court that it is a very violent presumption.

Q. What I want to know is, if he knows one.

A. I have never seen that bill of complaint.

Q. Well, you have seen the list of entrymen and entrywomen, haven't you?

A. I don't think I have.

Q. Haven't you seen the list published in the Missoula papers, and the names of the men and women that have been indicted for perjury?

A. I may have seen it.

Q. Well, you know you have seen it, don't you?

A. Well, I guess I have.

Q. Well, that list of people that are named in the bill of complaint, do you know one of that whole crowd?

A. Well, I don't recall who is in that list. I don't recall who is in it.

Q. Well, do you remember of knowing them at all when you read the list over? A. I expect I did.

Q. Do you know one of them that had any estate of any kind, either real or personal, and if you do, name one of them.

A. In the first place, I do not remember who they were, and at this time I cannot remember; at that time

(Testimony of Samuel Dinsmore.)

I might have known, and would know now, probably, if I saw the list.

Q. Well, don't you know, as a matter of fact, that in the operations in which you were engaged, that men of no means whatever—those that are named in the bill of complaint, were hired to make these entries?

A. I don't know anything of the kind.

Q. For the sum of one hundred dollars, which was paid by your firm? A. No, sir.

Q. And to enable you to get this land, and to sell it again, don't you know that?

A. No, sir, I do not.

By Mr. BICKFORD.—We now move to strike out both the question and answer, for the reason that it is irrelevant and immaterial, and does not prove, or tend to prove, any of the issues raised by the pleadings in this case; and upon the further ground that it is not proper cross-examination.

Q. And didn't you know at that time that Mr. Cobban was engaged in that work?

By Mr. BICKFORD.—We object to that, upon the ground that it is irrelevant and immaterial, and does not prove, or tend to prove, any of the issues raised by the pleadings in this case; and upon the further ground that it is not proper cross-examination.

A. No, sir, I do not.

Q. Didn't you see the notice published in the "Missoulian," with reference to these entries, at the time?

(Testimony of Samuel Dinsmore.)

A. No, sir, I didn't pay any attention to it; it wasn't in my line of business.

Q. Do you want me to understand that you are willing to swear to the fact that you paid no attention to the constant publications in the "Missoulian," of these entrymen, because it was not in your department of the partnership business?

A. I will state that there is many a day that I don't see the "Missoulian" at all, right in Missoula.

Q. Now, answer me that question.

By Mr. WALSH.—We submit to your Honor that the witness has answered the question.

By Mr. MAYNARD.—Now, then, Mr. Dinsmore, I want you to hear the question read that I put to you, and we submit that it is no answer to the question.

By Mr. WALSH.—We submit, if your Honor please, that the answer has already been given by the witness on two or three separate occasions.

By the EXAMINER.—Is that your answer, Mr. Dinsmore?

By the WITNESS.—Yes, sir, and I will state that I knew nothing about it; and I could not recall the names. There may have been published in the "Missoulian" a number of names there, but I didn't see it, and if I didn't see it, I wouldn't know anything about it. I paid no attention to it; I didn't read the advertisement in the "Missoulian."

(Testimony of Samuel Dinsmore.)

Q. Mr. Dinsmore, didn't you see these entrymen and entrywomen named in the bill of complaint, many of whom were indicted, when they were published in the "Missoulian"? Didn't you see them, and didn't it come to your attention? A. I have seen that.

Q. Didn't you see them in your office, and know them, and know that they were doing business in connection with their making entries under the Stone and Timber Act?

A. No, sir, I didn't know it.

Q. Didn't you see Mr. Catlin constantly making out—filling out blanks for the purpose of filing them in the land office? Didn't you see him doing that in your office?

By Mr. WALSH.—We object to the question, upon the ground it is not proper cross-examination.

A. I never noticed him, no, sir.

Q. You never noticed that? A. No, sir.

Q. Didn't you ever notice him during the summer and fall of that year taking these men and women over to the land office?

A. Mr. Catlin had done business with the land office quite a while. Every day he is in Missoula he does business in the land office as a land attorney. Maybe not every day, but very often, I know. I don't look over his shoulder to see what he is writing, and I know nothing about it.

Q. Well, as a matter of fact, if he was working in your office, you did see this work going on?

(Testimony of Samuel Dinsmore.)

A. I don't recall; I have seen his doing work with different people, but I don't know what it was. I didn't know whether it was a contest or what it was; I didn't pay any attention to it.

Q. And during that entire spring and summer, although you were in the same room with him, you never had any talk with him in regard to the business that he was engaged in, relative to this Blackfoot timber?

A. I don't remember; I may have talked to him about it, but I cannot recall the exact words he said, just now.

Q. If you might have talked to him in regard to the subject matter, might you not, in the conversations with him have learned from him what he was doing?

A. I don't recollect of him saying anything to me about it.

Q. You do not? A. No, sir.

Q. And you are prepared to say now that you don't remember what he did tell you?

A. No, sir; I don't remember of his ever saying that he was making entries for people. As I say, there isn't a day but what he probably speaks of it in a casual way; says that he is doing something as a land attorney.

Q. Don't you know of a large number of these entrymen and entrywomen that have made entries under the Stone and Timber Act, and didn't you know of their coming from the land office to your office to make out their deeds? A. No, sir.

Q. You don't know that? A. No, sir.

(Testimony of Samuel Dinsmore.)

Q. Didn't you see any of them there transacting that business?

A. I have seen people in the office, but what they were there for, I don't know. I might have known it at the time.

Q. If you might have known it at the time, do you wish now to be understood as saying you might have forgotten?

A. Yes, sir.

Q. And that you might have known at the time what was said by them to Mr. Catlin?

A. Possibly I might at the time.

Q. And although you might have known at the time what was said to you by Mr. Catlin, or by Major Pound, and by Mr. Griswold, just what they were doing, and you might have heard it from all of these sources, now, notwithstanding that you might have heard that, you have forgotten it now?

A. I don't think I ever heard it from them.

Q. Isn't it true that Mr. Griswold, who is sitting here, had frequent conversations in regard to this work, that he was doing for Mr. Cobban?

A. I did no more than I could help, not having had any use for Mr. Griswold.

Q. If you had no use for Mr. Griswold, why was it that a number of times you loaned Mr. Griswold money?

A. I don't think I ever loaned Griswold any money, not unless Mr. Cobban told me to loan him money; that would be the only reason why I would ever loan him money.

(Testimony of Samuel Dinsmore.)

Q. Haven't you on your own account, haven't you personally loaned Mr. Griswold money?

A. I don't remember.

Q. You don't remember? A. No, sir.

Q. You might have loaned him some money. If, on your own account, you didn't loan Mr. Griswold any money, you did loan Mr. Griswold money for the firm? Why did you loan it to him, if you didn't have any confidence in him?

A. I don't believe I did. If I did, I knew that I would get it back.

Q. Didn't Mr. Griswold pay you back every loan that he has ever received from you?

A. I think so; it was not his fault, though.

Q. Why do you say that?

A. Because he couldn't get trusted in Missoula for anything.

Q. Well, when you say you knew you would get it back—that you would get back any money you ever loaned to him, why do you volunteer and give utterance to the statement that it was not his fault, if he ever paid you back?

A. If he was working there for us, he knew he would have to pay it back; that we would take it out of his wages. I don't remember of ever having loaned Mr. Griswold any money. I might have done it and got it back again.

Q. Does your memory fail you in any of your business transactions, as it fails you today?

(Testimony of Samuel Dinsmore.)

A. You must remember this was two years ago, and we have done thousands of transactions since that time, and to remember those little things, I cannot do it.

Q. Well, we will get it down to the smallest, narrowest point. What I want to ask you is this, and it is true: That either you did or did not know what was going on in your office in regard to this matter, and are you now prepared to say that during all of this season, the spring and summer and fall, that Pound, Catlin, Griswold and Cobban were working in this matter, as it appears in this record, and that you didn't know anything about it?

A. I didn't know the details; I didn't know the character of the transactions or anything about it. Some of them I might have known at the time, but they have passed out of my mind now within fifteen or twenty months.

Q. And you are now prepared to say that you didn't know at the time of the arrangements and the agreements that Mr. Cobban, your partner, was making with these entrymen and entrywomen?

A. I knew that he was buying all the timber land that he could get, but about each one, I don't know anything about it; I never talked to them myself about it.

Q. Well, if he was buying all the timber land he could, who was he buying it from?

A. He was buying it from different parties who owned the timber.

Q. And you never heard of his making any arrangements with anybody, by which they were to go and enter these lands or anything of that kind? A. No, sir.

(Testimony of Samuel Dinsmore.)

By Mr. WALSH.—We object to the question, and we move to strike out the answer of the witness, for the reason that this is the fifth answer to the same question, and it is a mere repetition.

By Mr. MAYNARD.—I know that, and I desire to say by way of excuse and avoidance—

By Mr. WALSH.—Confession and avoidance.

By Mr. MAYNARD.—Confession and avoidance, yes—that of course the Government does not think it is possible that such a state of affairs could exist; that it is the position of the Government, and will be the position of the Government all the way through; and I just simply want to have it fixed absolutely beyond any question, that the witness understood the matter.

By Mr. BICKFORD.—It is unquestioned that he understood you.

By Mr. MAYNARD.—And you adroit gentlemen on the other side cannot say, when the case comes on for argument, that at the time the question was asked, the witness didn't understand the question. My position also will be, that Mr. Dinsmore did know all about it, and could not have possibly been there in that atmosphere, as he was, during all these months, without knowing.

By Mr. BICKFORD.—You won't find your friends on the other side assuming that the witness didn't understand the question.

By Mr. MAYNARD.—I am frank to tell you, and to tell

(Testimony of Samuel Dinsmore.)

Mr. Dinsmore, that it is beyond human probability that such a thing could have existed. That will be the position of the Government, and for his own sake and protection, I want to have it so affirmatively appear in the record that he did not misunderstand me at all.

Q. Will you tell me, Mr. Dinsmore, how it would be possible for you to live in that atmosphere, in that office, and in that business for all these months, and these things have gone on, and you are not able to tell as to what was going on?

By Mr. BICKFORD.—We object to the question upon the ground that it is irrelevant and immaterial to any of the issues in this case, and further, that it is not proper cross-examination, and is a question which has already been asked and answered two or three separate and distinct times.

By the EXAMINER.—You can answer the question.

A. Well, I have tried to answer it two or three times.

Q. And you have given the best explanation that you can? A. Yes, sir.

Q. Now, you say that—now, you swear very confidently, Mr. Dinsmore, though somewhat in haste, that you don't know anyone that would loan Mr. Griswold a dollar?

A. No, I said he had no credit or standing whatever in Missoula. I think you could bring ninety-five per cent of the people of Missoula here, and they would all testify to the same thing.

Q. Well, do you know of anybody that he has ever borrowed money from that he has not paid it back?

(Testimony of Samuel Dinsmore.)

A. Not personally, no.

Q. What is that? A. Not personally, no.

Q. In all the dealings that he has ever had with your firm, he has paid back all that he owed and got fifteen hundred dollars from your partner that he did claim, when he claimed he didn't owe him a cent?

A. I don't know whether he did or not.

Q. You never heard that? A. No, sir.

Q. You have never heard that your partner ever owed Griswold a cent? A. No, sir.

Q. You heard Mr. Cobban say that, didn't you?

A. Yes, sir.

Q. And you never heard of the result of it?

A. No, sir. I am not doing Mr. Cobban's business now.

Q. You never heard anything about the result of the suit of Griswold against Cobban? A. No, sir.

Q. And you never heard what the terms of the compromise were? A. No, sir.

Q. And never asked? A. No, sir.

Q. And nobody ever told you?

A. No, sir, I wouldn't know anything more about it than anyone else in Missoula. I have seen very little of Mr. Cobban the last year.

Q. Now, if you don't know of a person that Mr. Griswold owes that he hasn't paid, and he has never borrowed anything from you that he has not paid, why do you testify as you have?

(Testimony of Samuel Dinsmore.)

A. Simply because everyone in Missoula that you ever talk to will say the same thing.

Q. Can you specify any of them?

A. I could, but I don't think I will.

Q. Mr. Griswold isn't popular with your crowd of people that have been charged with committing crimes against the United States Government?

A. No, and no other crowd over there.

Q. Because he is assisting the Government in trying to bring the offenders to justice, he is unpopular?

A. No, no, sir, that isn't it; that is the least of his unpopularity.

Q. Now you cannot indulge in those glittering generalities without specifying something; now, I want you to name something. Did you ever know of Mr. Griswold being arrested for anything? A. No, sir.

Q. Did you ever hear of his being charged with any crime of any kind, except in connection with his efforts in trying to bring criminals to justice?

A. There was a gentleman telling me that—

Q. What is that?

A. Well, I will have to tell you what other people have told me, that is all.

Q. Just what some fellow has told you?

A. Yes, sir.

Q. Well, what was it?

A. There was a fellow told me some time ago, last summer, that he was with Mr. Griswold on a trip, and that Mr. Griswold picked up everything in sight.

(Testimony of Samuel Dinsmore.)

Q. Yes, I think I must know this man's name; that was—was it the coffee strainer business?

A. I don't know.

Q. Was it Mr. Bean?

A. I don't know as I should tell.

Q. Well, I want to know if it was Mr. Bean. Mr. Bean has been sworn here and he has testified that Mr. Griswold, while they were working together, he took the cooking outfit, or a coffee strainer, and a butcher knife, or something, to help out Mr. Daly, and the whole thing was worth about twenty-five cents. Was it Mr. Bean that told you that? A. Mr. Bean told me, yes, sir.

By Mr. MAYNARD.—I don't think I want to ask you any more, Mr. Dinsmore.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Dinsmore, now that you have been so particularly asked about these matters, and about any delinquencies and shortcomings that you have heard from any person with reference to Mr. Griswold, I will ask you to state whether Mr. Griswold ever told you anything about his own delinquencies? A. Yes, sir.

Q. What did he tell you?

A. He used to brag to me about one of the kids down on the row belonging to him. He used to make—he used to come in and laugh about it every day or two.

Q. Well, what do you mean by the row?

A. The tenderloin district in Missoula.

(Testimony of Samuel Dinsmore.)

Q. You told about having an interview with Mr. Kendall, with reference to—

By Mr. MAYNARD.—On behalf of the Government, I move to strike out the question just propounded to the witness, and his answer thereto, upon the ground that if true, it would not affect Mr. Griswold's reputation for honesty and truth and veracity.

Q. What, if anything, did you have to do with the effort to sell this land to Mr. Kendall?

A. Nothing. I think I told him we had timber land for sale, and asked him if he didn't want to buy some more.

Q. Had you known him prior to that time?

A. Yes, sir.

Q. Where did you know him?

A. I have known Mr. Kendall about seven years.

Q. Now, you said also that you had sold some land or was instrumental in selling some land to the Largey estate? A. I simply talked with him about it.

Q. Talked with him about it? A. Yes, sir.

Q. With whom did you talk about it?

A. Mr. Noon.

Q. He is a representative of the Largey estate?

A. Yes, sir.

Q. Did you sell any land to him, timber land?

A. Yes, sir, I think so.

Q. Well, do you know about it?

A. I am not any clearer on that than I am the rest of the situation. I have—I know that timber land was sold

(Testimony of Samuel Dinsmore.)

to different parties, and where it was, generally, but the general business transaction, I know nothing about it.

Q. Well, why isn't it, Mr. Dinsmore, that your memory isn't accurate about these timber transactions?

A. Well, I will tell you. Mr. Cobban transacted that business wholly himself, and I paid no attention to it whatever. I think Mr. Cobban would be as ignorant on my department of the transactions that I am intimate with. At the time, Mr. Cobban might have talked to me about this; that is, anyhow about the different sales that he was making. I know he talked to me about going to Chicago with the view of trying to sell some of this land. At the same time, it has been some time ago, and has passed out of my recollection.

Q. Now, what do you know, Mr. Dinsmore, about your firm or Mr. Cobban and your firm, acting as the agent for the defendant, Senator Clark, in the acquisition of the timber lands that passed into his name up in the Blackfoot country?

A. I don't see how I could tell it, because we tried to sell the timber to other people before we did to Senator Clark.

Q. Well, what do you know about the condition of affairs that existed, and as to whether that condition of affairs did exist?

A. I am satisfied that it did not exist.

Q. If anything of the kind had existed, you might have known it, and you mean to say that you knew nothing at all about it.

(Testimony of Samuel Dinsmore.)

A. I knew nothing at all about it; no, sir.

Q. And so far as your information goes about the matter, it did not exist?

A. No, sir; if that existed, I think Mr. Cobban would have told me about it.

Q. Now, you stated something about borrowing twelve thousand dollars from the Missoula National Bank? A. Yes, sir.

Q. I wish you would tell—and other sums from other banks—I wish you would tell us what disposition was made of the money that you borrowed from this bank—and the other sources?

By Mr. MAYNARD.—I object to that for the reason that the question has already been answered; that it was borrowed and checked out again, and for the purpose for which it was checked out.

Q. I asked you what you did with the money?

A. It was placed to our credit.

Q. In your account? A. Yes, sir.

Q. And how is it that you are unable to say how much of this went to the particular purpose of the acquisition of timber lands?

A. Because I didn't know what Mr. Cobban checked out, or what money he used for buying these timber lands. If I wanted to use any money to buy anything, I checked out too, on that account.

Q. You both checked against that account?

A. Yes, sir, against the same account.

(Testimony of Samuel Dinsmore.)

Q. You both checked against that same account?

A. Yes, sir, both of us.

Q. I wish you would state whether or not you had a separate fund or account, separate and apart from your other funds, for the acquisition of timber?

A. No, sir, we did not.

Q. When was it that you purchased the Higgins block?

A. I believe it was in February, 1900. I am not—I couldn't state whether it was or not. Might have been March; it might have been earlier or later; I cannot state.

Q. What connection, if any, did the loan which you got from Senator Clark have with the purchase of the Higgins block?

A. We used it for that purpose.

Q. And what knowledge have you of any loan made by Senator Clark prior to that time?

By Mr. MAYNARD.—We object to that, because the witness has shown on his examination that he does not know a thing about the loans made by Clark to his firm, and has distinctly said that he knew of none, with the single exception of the loan that was made at the time the Higgins Block was bought.

A. I think that there was a loan made. I don't know whether it was prior to that time or not; I cannot recall the date.

Q. Well, now, I desire to know whether you mis-

(Testimony of Samuel Dinsmore.)

quote yourself or not, in saying that you had made a loan of Senator Clark in February, 1900?

A. Well, I don't—I don't remember saying that, because, as I stated before, I don't remember the dates; I don't remember whether it was February, and I don't remember the date it was that we bought the Higgins Block.

Q. Well, I spoke about the year 1899.

A. Yes, I think it was in 1899.

Q. Well, you didn't buy the Higgins Block in February, 1899, did you?

A. Well, as I say, I don't remember whether it was in the fall of the year or in the spring.

Q. Well, if it was in the fall of the year, it wouldn't be in February, would it?

A. No, sir, I couldn't tell you within a month or two months; I don't care to pin it down to that time, to the time of the year.

Q. I want to know whether it was in February, 1899, or 1900? A. It wasn't in 1900.

Q. It what? A. What is that?

Q. It what? You said something about it was, or it was not in 1900, which did you say?

A. I don't remember what date it was; I don't remember whether it was 1900.

Q. When did you commence business with Mr. Cobban? A. 1890.

Q. What time in 1898?

A. I think it was in November, 1898.

(Testimony of Samuel Dinsmore.)

Q. November, 1898? A. Yes, sir.

Q. February, 1899, would be three months after that, wouldn't it? A. Yes, sir.

Q. Did you buy the Higgins Block then?

A. No, sir.

Q. How long were you in business when you bought the Higgins Block?

A. It must have been a year.

Q. Well, it couldn't have been earlier than November, could it, Mr. Dinsmore?

A. No, sir, it couldn't.

Q. Now, what have you to say as to your having borrowed any money from Senator Clark in February, 1899?

A. If that is when we bought the Higgins Block, we borrowed the money then.

Q. But I understood you to say that you didn't buy the Higgins Block within three months after you went into business? A. Didn't buy it for a year.

Q. A year after November, 1898, would be what time, Mr. Dinsmore?

By Mr. MAYNARD.—We object to the question for the reason it is incompetent; it is also irrelevant and immaterial, and the whole examination of the witness has nothing whatever to do with the issues in this case.

A. I don't remember of borrowing money at that time.

Q. The question is, when would a year after February, 1898, be, Mr. Dinsmore? A. 1899.

(Testimony of Samuel Dinsmore.)

Q. And what month?

A. It would be in February.

Q. And November, 1899, would be a year from November, 1898? A. Yes, sir.

Q. Now, I wish you would state, Mr. Dinsmore, whether you borrowed any money from Senator Clark, in February, 1899, with which to buy the Higgins Block?

By Mr. MAYNARD.—I object to the question, because the witness has already answered it four times already.

A. Well, we didn't borrow it to buy the Higgins Block at that time, certainly.

Q. Well, now, have you any knowledge of borrowing any money from Senator Clark in 1899 for any purpose?

A. Yes, sir.

Q. Now, you have told counsel that you didn't know of any property owned by the Dodds up in the Blackfoot country, by means of which they would be able to buy any land from the Government of the United States. Is that correct? A. Yes, sir.

Q. Do you know of any property in or by which I would be able to buy any land of the Government of the United States? A. No, sir.

Q. Or Judge Blake? A. No, sir.

Q. Or Mr. Maynard here? A. No, sir.

Q. That is to say, your ignorance upon the one subject is just as good as your ignorance on the other?

A. Yes, sir.

(Testimony of Samuel Dinsmore.)

Q. Are you pretty well acquainted with the people up in the Blackfoot country?

A. Not very, no, sir.

Q. What business is Mr. Catlin engaged in at the present time in Missoula, if any?

A. Real estate and land attorney.

Q. Where is his office?

A. His office is with me.

Q. In your office? A. Yes, sir.

Q. You and Major Catlin are not engaged at the present time in any conspiracy to get any timber lands from the Government of the United States illegitimately, are you? A. No, sir.

Q. What business is he practicing now, Mr. Dinsmore? A. Mr. Catlin?

Q. Yes, sir. A. Real estate.

Q. And what, if any occasion has he—what connection, if any, has he with the United States land office?

A. Well, there is lots of people who come from the Bitterroot valley and different places and talk to him, and I know—am satisfied, that he acts as land attorney.

Q. Mr. Dinsmore, these various loans that you spoke about made from the First National Bank of Missoula, and the State Savings Bank and the First National Bank of Butte, upon whose suggestion were they made, yours or Mr. Cobban's?

A. Mr. Cobban's.

(Testimony of Samuel Dinsmore.)

Q. And for what purpose did Mr. Cobban say that he desired to have the money?

By Mr. MAYNARD.—We object to the question upon the ground that it is leading, and further that it has already been asked the witness and answered by him.

A. To acquire timber lands and to use in our business.

Recross-examination.

(By Mr. MAYNARD.)

Q. Where did you get the land from that you sold to the Largey estate?

A. I don't remember where it was acquired.

Q. Where was it situated?

A. Part of it, I guess, up the Blackfoot, and part of it in the Bitterroot.

Q. How much of it is in the Blackfoot?

A. I don't know anything about the amount of feet, or anything about it.

Q. Do you know if there is anything in the Blackfoot or not? A. No, I do not.

Q. You don't know if there was any of it in the Blackfoot or not, do you? A. No, sir.

Q. Well, if you didn't know, why did you say it was?

A. I said probably it was.

Q. Why did you say probably?

A. I don't know why I said it; just to answer your question, I suppose. I don't know where the timber is. I didn't see any of the timber land that was sold.

Q. Then I object to you saying that it was in the

(Testimony of Samuel Dinsmore.)

Blackfoot or in the Bitterroot when you don't know anything about it.

A. Well, it might have been there and it might have been somewheres else.

Q. And the truth is you know nothing about it?

A. No, sir.

Q. Do you know anything about it?

A. No, sir.

Q. Do you know where you got the money to pay for it? A. No, sir.

Q. Where did the property come from that you offered to Mr. Kendall?

A. It was up in the Blackfoot country.

Q. How do you know that?

A. Mr. Cobban told me it was.

Q. How much was there of it?

A. I don't know that.

Q. What is that?

A. I don't remember now; I knew at the time.

Q. You knew at the time how much there was, and that it was in the Blackfoot country?

A. I supposed it to be up there; I didn't know for certain whether it was up in the Blackfoot or at Camas Prairie, or where it was.

Q. Except as Mr. Cobban told you?

A. Yes, sir.

Q. And you cannot remember anything about where he told you he had acquired it? A. No, sir.

Q. Did you know of the fact that your firm had paid

(Testimony of Samuel Dinsmore.)

Mr. Griswold during that season upwards of five thousand dollars?

A. I didn't know the exact amount, no, sir.

Q. You knew that it went up into the thousands, didn't you?

A. I believe I did at the time.

Q. Now, do you wish me to understand and have it recorded here, that you didn't know and you don't know now what your firm was paying Griswold, or that it was paying him upwards of five thousand dollars for having worked for you?

A. Knew he was working for us, I suppose.

Q. For what?

A. For working for us, I suppose.

Q. Well, I want to know if you know what work he was doing for you?

A. I don't know what he was doing.

Q. Didn't know anything about it?

A. No, sir.

By Mr. MAYNARD.—Well, that is all.

I do hereby certify that I have read the testimony of the above named witness, Samuel Dinsmore, and the same has been correctly transcribed.

HENRY N. BLAKE,
Examiner.

Subscribed and sworn to before me this —— day of April, A. D. 1902.

_____,
Examiner in Chancery.

By Mr. BICKFORD.—If your Honor please, I will offer in evidence the following: "Circular from the General Land Office, showing the manner of proceeding to obtain title to public lands under the homestead, desert land, and other laws. Issued July 11, 1899. Washington Government Printing Office, 1899."

"5. The filing of notice of intention to make proof must be accompanied by a deposit of sufficient money to pay the cost of publishing the notice to be given by the register, the deposit to be made with the receiver, who will notify the register thereof, that he may cause the notice to be published, but settlers are not to be deprived of the right to make their own contracts for publishing notices of intention to make final proof and to make payment therefor directly to the publishers of the paper, after the notice has been prepared by the register and the paper designated by him, on presenting to the register a statement from the publisher or his agent that the money for the payment of said notice has been paid to or deposited with said publisher."

By the EXAMINER.—With the consent of all the parties concerned, it is agreed that an adjournment may be taken until Tuesday, Auril 22d, 1902, at ten o'clock A. M.

HENRY N. BLAKE,
Examiner in Chancery.

In the Circuit Court of the United States, District of Montana.

THE UNITED STATES,
Complainant,
vs.
WILLIAM A. CLARK,
Defendant.

Certificate of Master in Chancery.

To the Judges of the Above-entitled Court:

I do hereby certify that under the order of said Court made and entered in said cause upon the first day of October, 1901, and in pursuance of the stipulations and agreements of the above-named parties, I continued to take the testimony therein, in my office in the city of Helena in said District; that Charles H. Cooper and George H. Macdougall, heretofore appointed stenographers to take the testimony of the witnesses, in shorthand, took and transcribed the same; that the following named persons were called as witnesses, and appeared personally before me and were duly sworn to testify to the truth, the whole truth, and nothing but the truth, to wit: John B. Catlin, Ernest R. Kilbourn, Oliver E. Muchmore, Bernard Noon, John M. Peers, Marion B. Watson, and Arthur H. Wethey; that said witnesses were examined by counsel for the respective parties, and their testimony is contained in this volume, which is

(Testimony of A. H. Wethey.)

numbered eight, on pages 4218 to 4884, inclusive; that said witnesses with the exception of Bernard Noon and John M. Peers, respectively, carefully read, corrected, subscribed and verified their testimony before me at the times hereinafter mentioned; and that under the stipulation of the parties, I certified that the testimony of said Bernard Noon and John M. Peers has been correctly transcribed.

Defendant's Exhibits numbered 285 to 302, inclusive, described in the index hereto are herewith filed.

HENRY N. BLAKE,

Standing Master in Chancery and Examiner.

Dated this 11th day of July, 1902.

A. H. WETHEY, after being duly sworn as a witness for defendant testified as follows:

Direct Examination.

(By Mr. BICKFORD.)

Q. What is your name?

A. A. H. Wethey.

Q. Where do you reside

A. Butte, Montana.

Q. How long have you lived in Butte?

A. Since December, 1887.

Q. Are you acquainted with the defendant in this case, W. A. Clark? A. Yes, sir.

Q. How long have you known him?

A. Since the summer of '87.

Q. I will ask you to state if you have any business

(Testimony of A. H. Wethey.)

connection with him, and if so, what that business connection is?

A. Yes, sir, I am his general manager.

Q. How long have you been the general manager of his business affairs?

A. Well, I have had charge of his affairs since July, 1888.

Q. You were his business manager and general manager of his affairs in the summer of '99, were you?

A. Yes, sir.

Q. You at that time knew of some transaction with reference to the purchase of timber or timber land in the counti;es of Deer Lodge and Missoula, did you?

A. Yes, sir.

Q. I will ask you to state from whom you first heard concerning these timber lands?

A. From McLoughlin, H. W. McLoughlin.

Q. Who was Mr. McLoughlin, and what was his occupation at the time when you heard of this?

A. Well, he was general manager of the Western Lumber Company, and I was vice-president of it.

Q. About when was it that you heard concerning these lands from Mr. McLoughlin?

A. In the summer of '99.

Q. With reference to the time when the first transfer of the property or of the timber land was made, when was it? A. In July, '99.

Q. I will ask you to state whether or not you have a

(Testimony of A. H. Wethey.)

recollection concerning the calling of my attention to certain abstracts of title? A. Yes, sir.

Q. When was that with reference to the deeding of the lands to Senator Clark?

Mr. MAYNARD.—I object to this question and all questions relating to this subject matter on the ground that it is immaterial and irrelevant as to any issues, as far as the abstract of title are concerned to which counsel refers, for the reason that they have no tendency whatever to disprove the allegations of the complainant or to prove the allegations of defendant in his answer as to the element of good faith on the part of himself?

A. We did not buy any of the land at all until the abstract had been submitted and approved by Mr. Bickford.

Q. Calling your attention to the first deed which I hand you, which is dated the 29th day of July, or about the 29th day of July, 1899, I will ask you to state with reference to that deed whether before the purchase was completed, the deed executed and payment made therefor—whether the abstract of title had been examined and reported on? A. They had.

Q. When was it that you first had any conversation with R. M. Cobban with reference to the purchase of these lands?

A. I do not think I talked with Mr. Cobban until after the first purchase had been made, and that was made through McLoughlin. I only had a conversation

(Testimony of A. H. Wethey.)

with McLoughlin in regard to whether we had better buy that land or not.

Q. Did you ever have any talk with Senator Clark with reference to buying this land? A. I had.

Q. Did you have any talk with him concerning the purchase of the first land that was bought?

A. I did.

Q. What, if any, statements were made to you at that time with reference to the title of the land, and in whom the title at that time rested?

A. I never examined the abstract of title myself, but Mr. Cobban furnished us with warranty deeds, and the abstract had been approved by our counsel, and we thought we were perfectly secure in purchasing the land.

Q. There were no payments made for this land until such time as the abstract had been approved?

A. No.

Q. What, if any, representations were made at this time or prior to this time with reference to the ownership of the land?

A. There was never any question at all.

Q. Upon the statement made to you by Mr. Cobban and by others that the ownership of the land was in Mr. Cobban?

Mr. MAYNARD.—We object to that as leading.

A. On this first transaction, of course, I had not met Mr. Cobban.

Mr. MAYNARD.—What question are you answering

(Testimony of A. H. Wethey.)

now? I objected to the question and counsel withdrew the question so there is no question before you.

The EXAMINER.—That is my understanding. Put another question.

Q. What, if any, knowledge did you have concerning the title to this land at or just before the time when the transfer was made or the deed executed?

A. Why, I had no personal knowledge of the title.

Q. No, but you had acquired some knowledge concerning title to the land either from your conversation with people or by the papers that were in your possession and submitted to you, had you not?

A. The deeds were submitted to us with the abstract; that is, the abstract had been passed upon and we were advised that the title rested in Mr. Cobban, and Mr. Cobban furnished us with a warranty deed, and I never paid for any of the land until our counsel advised us that it was safe to do so.

Q. What did Mr. Cobban claim as to who owned the land?

A. I had not seen Mr. Cobban about the land until after this first transaction was completed.

Q. Then, what did Mr. McLoughlin represent to you with reference to the title of the land?

A. He never discussed the question of title to land; all he said was that the timber was desirable timber, and he advised us to buy it.

Q. Wasn't other statements made by McLoughlin

(Testimony of A. H. Wethey.)

with reference to the title to this particular timber land that you are about to buy as to who owned the land?

Mr. MAYNARD.—Objected to as leading, entirely leading.

Q. You may answer.

A. He said that the land belonged to Mr. Cobban, and the deed shows that.

Q. And there were other things that showed that the land belonged to Mr. Cobban besides the deed?

A. The abstract of title, but I never examined them.

Q. Now, with reference to the making of these deeds, who, if anyone, drew the check or paid for the land?

A. I did.

Q. Will you take the first deed, Mr. Wethey, and tell me what the consideration was for the land that was conveyed by the deed that you hold in your hand?

Mr. MAYNARD.—I object to that question on the ground that the check itself which was drawn by Mr. Wethey and which undoubtedly is in his possession is the best evidence of the fact.

Q. This is Defendant's Exhibit No. 276. State the amount of the consideration that was paid for the transfer of that land from Mr. Cobban to the defendant in this case?

A. This particular deed from Mr. Cobban to W. A. Clark for land in Missoula county, dated July 29, 1899, I paid $5,437.50 cents in cash for it.

Q. That, as I understand you to say, was the exact

(Testimony of A. H. Wethey.)

consideration that was paid at the time that the transfer was made? A. Yes, sir.

Mr. MAYNARD.—That was the first deed?

A. Yes, sir.

(By Mr. BICKFORD.)

Q. What, if any, knowledge did you have at that time with reference to the manner in which this land had been acquired from the United States.

Mr. MAYNARD.—I object to that question as entirely immaterial and irrelevant.

(Objection withdrawn.)

A. I had no knowledge whatever.

Q. Passing to the next deed which you have in your possession, being Defendant's Exhibit No. 277, I will ask you to state what, if any, knowledge you had concerning the ownership of that land at the time when this deed was executed or delivered to Senator Clark.

Mr. MAYNARD.—When is the acknowledgment, the date of the deed?

A. The deed is dated July 29th, 1899, and acknowledged July 29th, 1899. Do you want me to state the consideration for it?

(By Mr. BICKFORD.)

Q. Answer my other question first.

A. Well, the knowledge I had was that our counsel advised us that the land was owned by R. M. Cobban.

(Testimony of A. H. Wethey.)

Q. At that time you had a talk with Mr. McLaughlin as to the ownership of the land, had you not?

A. This land was bought at the same time as the land in the first deed, and on the same day, and it was all one transaction, only part of it was in Missoula county and part of it in Deer Lodge county.

Q. And that was the reason two deeds were made instead of one? A. Yes, sir,

Q. And you had the same knowledge concerning this land as in the deed just testified to? A. Yes, sir.

Q. Then what was the consideration paid at that time for the land mentioned in the deed which you now hold in your hand? A. $7,656.25.

Q. Who paid the consideration? A. I did.

Q. Who was it paid for; in whose interest did you pay the money?

A. The money was given to Mr. McLaughlin to give to Mr. Cobban.

Q. And the person who purchased, who was the purchaser? A. W. A. Clark.

Q. Then you paid the money in the interest of W. A. Clark? A. I did, sir.

Q. And that was the exact amount that was paid by you at that time?

A. That is the full amount.

(By Mr. MAYNARD.)

Q. Was that in cash too?

A. That was in cash; yes, sir.

(Testimony of A. H. Wethey.)

(By Mr. BICKFORD.)

Q. Now, with reference to the next deed, which is marked Defendant's Exhibit No. 278, I will ask you to state what, if any, talk you had with R. M. Cobban with reference to the land mentioned and described in that deed?

A. I am not sure that this second transaction—whether I had seen Mr. Cobban or not, or whether it was still bought through Mr. McLaughlin.

Q. You don't know whether you had any talk with Mr. Cobban concerning it or not?

A. At this particular time, no, sir.

Q. Have you any knowledge with reference to the payment for that land and to whom payment was made?

Mr. MAYNARD.—He says he don't know whether it was through McLaughlin or not.

Mr. BICKFORD.—That does not answer my question.

A. The money was paid to Mr. Cobban, but whether I paid it directly to Mr. Cobban or paid it through McLaughlin I cannot say, but I drew the check in full and paid the money; somebody got it.

Q. What consideration is mentioned in that deed as the consideration therefor?

A. Twenty-one thousand eight hundred and seventy-five dollars.

Q. And that was the actual amount that was paid?

A. Yes, sir.

Q. In whose interest was the check drawn and the payment that you made?

(Testimony of A. H. Wethey.)

A. It was drawn in the interest of R. M. Cobban.

Q. The check was drawn upon whose account?

A. The check was drawn upon the account of W. A. Clark.

Q. And was made payable to R. M. Cobban, you mean?

A. I said it was paid in the interest of R. M. Cobban; I did not say it was payable to R. M. Cobban, because I do not remember.

Q. At that time, as I understood it, Mr. Cobban was the owner of the land that was transferred?

A. The deed shows that he was.

Q. Had you ever examined any of the abstracts of title or any of the other papers in connection with that transaction so as to know from that source or any other that the land was owned by Mr. Cobban?

A. I never looked at the abstract of title.

Q. Then, as far as the deed mentioned is concerned you cannot at this time state whether the same was made on representation as to who was the owner of the land from somebody else, or whether it was done on the advice of counsel.

Mr. MAYNARD.—Objected to as leading, and as the witness has already said that the land was purchased solely upon the representation and advice of counsel.

A. It was, in this case, however.

Q. What was the truth of the matter in that case?

A. Well, I did not pay any money on any of these deeds until my counsel, or Senator Clark's counsel advised me that it was all straight, and the title was cor-

(Testimony of A. H. Wethey.)

rect and there was no flaw that I knew of in the title. If I had known there was any trouble coming, we would not have taken it.

Q. State what, if any, knowledge you had with reference to the manner of entering the land mentioned in this deed?

A. I had no knowledge of how the lands were entered upon, or how the title was acquired from the United States Government.

Q. Did you have any knowledge with reference to the business relations existing between Mr. Cobban and Senator Clark?

A. There were no business relations at all.

Q. I will ask you to state whether at that time or at any time mentioned in any of these deeds, Mr. Cobban was the agent of Senator Clark? A. No, sir.

Q. Has the condition or relationship of principal and agent ever existed between them?

A. It has not.

Q. Was there ever, to your knowledge, any contract or agreement between Senator Clark and R. M. Cobban, by the terms of which Cobban was to be charged with the duty of procuring title from the Government of the United States for any land or lands at any time?

A. No, sir.

Q. From your conversation with Senator Clark, and from your general knowledge of these transactions, I will ask you to state whether or not it is a fact that these were out and out sales or whether there was any

(Testimony of A. H. Wethey.)

prior agreement with reference to the acquiring of this title in the interest of Senator Clark?

A. They were out and out sales; he had nothing to do with the acquisition of the property in any way.

Whereupon further hearing was adjourned until Friday, April 11th, 1902, at 10 A. M.

Friday, April 11th, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

A. W. WETHEY, a witness on behalf of the defendant, resumed the stand for further examination.

Direct Examination.

(By Mr. BICKFORD.)

Q. Mr. Wethey, in your testimony of yesterday, you testified concerning the deed recorded the 31st day of July, 1899, Defendant's Exhibit No. 276, and also concerning the Defendant's Exhibit No. 277, and said, I believe, that those were the first transactions.

A. Yes, sir; those were the first transactions.

Q. Now, with reference to those first transactions, I will now ask you to state, having refreshed your memory by reference to documents in your possession, and otherwise, whether or no you have any personal recollection with reference to the signing of those deeds, or any conversation between yourself and the defendant in in this case, with reference thereto.

A. The Senator told me to pay a dollar and twenty-five cents per thousand feet for the lumber covered by those deeds, according to the estimates.

(Testimony of A. H. Wethey.)

Q. Did you have in your possession at any time anything from which he could make the estimates?

A. I had been furnished estimates with each deed, and those estimates were checked over by Mr. McLaughlin, and he advised us whether the particular amount of timber was there or not.

Q. Now, do you remember of a meeting at which you were present, at least a part of the time, when this matter was under discussion, and when Senator Clark was present, and I was present, when this matter was discussed?

A. I think that Mr. Clark and yourself and Mr. McLaughlin, and probably Cobban, discussed this matter, but I hardly think I was there during the discussion. I may have been called in at the end of the meeting and told what had been done, and to pay this money.

Q. Now, passing then to the deed which is marked Defendant's Exhibit No. 278, I will ask you to state what, if any, recollection you have concerning that deed?

A. The deed is dated September 16th, 1899, and the consideration is $21,875.00. My recollection in regard to that matter is—at the same time that this deed was handed to me there was another one of the same kind for timber in another county. This deed here is for timber in Deer Lodge.

Q. Yes, sir; and the two transactions—

A. And the two deeds together form one transaction.

Q. Yes, but going on with this particular transac-

(Testimony of A. H. Wethey.)

tion, what about the consideration that is mentioned there? Is that the true consideration, or otherwise?

A. Yes, sir; that is based on a dollar and twenty-five cents per thousand feet, and that is the price that was actually paid to Mr. Cobban for the timber.

Q. At that time I will ask you to say if you have had any knowledge, either from the examination of the abstracts of title, or from statements made to you by Mr. Cobban, as to who was the owner of the land that was at that time transferred?

A. I understood that Mr. Cobban was the actual owner of all this land.

Q. Of all the land mentioned in the deed?

A. Yes, sir.

Q. Then, I will ask you to consider the two deeds of the same date, together in the—

A. And these deeds are warranty deeds. He warrants the right, title and interest against the acts and deeds of everybody.

Q. I now call your attention to Defendant's Exhibit No. 279, and ask you if that is the other deed that was executed at the same time, or not?

A. Yes, sir; that is the same deed.

Q. And is that deed a part of the same transaction?

A. Yes; this covers the land in Missoula county.

Q. I will ask you to state what the consideration mentioned in that deed is? A. $15,031.25.

Q. And was that the actual consideration paid?

A. Yes, sir; that was the actual consideration paid for the timber.

(Testimony of A. H. Wethey.)

Mr. MAYNARD.—I desire to save the benefit of an exception in regard to each of the questions put to the witness, relative to the actual consideration paid, upon the ground that the checks which were delivered in payment for the deeds, are the best evidence of that fact, and I shall expect that they be produced on this hearing.

By Mr. BICKFORD.—I want to state to counsel that we may not be able to produce the checks in every instance, because the whereabouts of the checks are not known to us, but we will later call upon this witness to identify certain stubs of checks that were used at that time, and ask counsel to accept this as the best evidence that we now have in our possession concerning the transactions. The checks themselves in which the stubs were used, show what the transactions were, and are in their consecutive order, and were made out in the usual course of business.

Q. At the time when this transaction took place, Mr. Wethey, where was Senator Clark?

A. I rather think he was in Butte at the time.

Q. At that time? A. Yes, sir.

Q. Did you have any correspondence with Senator Clark, or with any other person, or have you found any correspondence with Mr. Clark or with any other person, that refers to this particular deal?

A. This particular deal?

Q. Yes, sir.

A. I don't know; there is considerable correspond-

(Testimony of A. H. Wethey.)

ence there, but I don't remember whether it refers to this particular deal or not.

Q. Now, I will ask you to state whether or no at the time this deal was made it was complete in itself?

Mr. MAYNARD.—We object to that as being leading.

By Mr. BICKFORD.—Well, we will put it in a different shape.

Q. What, if any other deal, was there in contemplation at that time? A. No other deal at all.

Q. At the time this deal was closed, was there, to your knowledge, any contract or agreement between Mr. Cobban and Mr. Clark, with reference to any other land?

A. No, sir; there was not; my understanding was when this purchase was made, it made up the deal of forty million feet of timber on the Blackfoot river, and I remember of Senator Clark expressing himself to the effect that that would be sufficient for any needs that he might have, and that he would not take any more.

Q. I will ask you what you have to say, Mr. Wethey, with reference to there being any contract or agreement, or any arrangement whatever between Mr. Clark and Mr. Cobban, whereby Mr. Cobban was to locate people upon timber lands, and acquire title, and the land subsequently to be conveyed to Mr. Clark?

By Mr. MAYNARD.—I object to that as leading, and as assuming that Mr. Wethey has a knowledge upon which there is nothing in the record to base that assumption on. I have no objection whatever to his testifying to whatever he himself may know regarding the matter;

(Testimony of A. H. Wethey.)

as to what deal the defendant, Senator Clark may have made, is another matter entirely.

A. I discussed the matter with Senator Clark, and, as I said before, he expressed the opinion that making this second purchase in September, that he had purchased all the timber that he would want, and that he wouldn't take any more. I know he had no arrangement with Mr. Cobban to secure timber for him in any way.

Q. Then you would say that there was no such agreement as was indicated in the question.

A. No, sir.

Q. Between Mr. Cobban and Mr. Clark, I mean, of course. A. No agreement whatever.

Q. Would you be apt to know if such an agreement was ever made, or if there was such an agreement in existence? A. I certainly should.

Q. That is the scope of your employment, wasn't it, and in the ordinary course of business it would come under your observation.

A. Yes, sir; any business of that kind would be turned over to me to take care of and to carry out, or to see carried out.

Q. I call your attention, Mr. Wethey, to Defendant's Exhibits Nos. 283 and 284, being deeds dated November 13th, 1899, and November 11th, 1899, and ask you to state with reference to the consideration mentioned in those deeds.

A. The deed dated November 11th 1899, is for timber

(Testimony of A. H. Wethey.)

lands in Missoula County; that is the first deed, which is dated November 11th, 1899. That covers land in Missoula County, and the consideration is $35,512.50. The other deed is dated November 13th, 1899, for timber land in Deer Lodge County and the consideration paid was $33,718.75.

Q. I will ask you to state, Mr. Wethey, whether or not the consideration mentioned in those deeds was the actual consideration which was paid at the time of the execution of those deeds?

A. Well, in connection with this transaction, it was different from the former transaction. It was not an outright sale.

Q. I will ask you to state the facts and circumstances in connection with the transaction, as you know them.

A. My recollection is that when Mr. Cobban came with these deeds and the lists of all the timber lands and all the abstracts of title showing that the title to all the lands was vested in him, he wanted us to buy them for the same price as before, but the Senator thought that we had all the timber that he needed, and then Mr. Cobban made us a proposition that he would give us a four months' option on the timber lands covered by those deeds, if we would make him a loan at that time.

Q. How much was the loan?

A. There was a loan of ten thousand dollars made in October.

Q. Well, now, what—

WITNESS (Continuing.)—A. On the 17th of Septem-

(Testimony of A. H. Wethey.)

ber—let us see, the first money I paid on account of those deeds was November 17th.

Q. How much did you then pay?

A. It appears that Cobban had borrowed ten thousand dollars from Clark & Brother's bank, and on November 19th, I paid Clark & Brother $10,063.30, and took up the note with $63.30, the amount of interest due the bank.

Q. Yes. You may go on.

A. And then on the same day I paid Cobban the additional amount of $29,682.75.

Q. Making a total of how much, Mr. Wethey?

A. Making a total of $39,746.25.

Q. And that was the total amount paid at that time to Mr. Cobban?

A. To Mr. Cobban, and that was based on a loan of seventy-five cents per thousand feet, represented by his deeds, and we had the option, I think, to pay the balance of fifty cents a thousand more and take up the deeds; but he had the privilege of selling it to anybody else, and Mr. Cobban told me that he was negotiating with the Blackfoot people, and also with some eastern parties, he expected to make a sale to some people in the east.

Q. At that time, then, while the deed appeared to be absolute on its face, as a matter of fact it was merely security for the repayment of the money advanced to him at that time? A. Yes, sir.

Q. Now, I will ask you to state whether subsequent to that time the title was completed, so that it became

(Testimony of A. H. Wethey.)

complete and the ownership of the lands came to Senator Clark?

A. Yes, sir. I will say in connection with this that before the time had expired that we had been given, Mr. Cobban came to me and said that he had bought some property in Missoula, and had to pay a great deal of money for it, and if we would take these timber lands specified in those deeds, that he would allow us five per cent discount. I submitted the matter to the Senator and had his permission to take up the two deeds, and to take the five per cent discount for cash.

Q. Can you state what property it was that Cobban said he had bought? A. It was the Higgins block.

Q. Do you remember the purchase price that he said he had paid?

A. I think it was between fifty and sixty thousand dollars, fifty-one thousand dollars, if I remember rightly.

Q. Just for the information of counsel, and in order that there may be no misunderstanding, I will ask you what your business habit is in your dealings and communications with Senator Clark, when he is in Butte, Mr. Wethey?

A. I do most of my business with him by correspondence, that is, when he is in Butte.

Q. Isn't that true even when you are occupying adjoining offices? A. Yes, sir.

Q. I will state, if your Honor please, that we have several letters in our possession, a portion of the letters bearing upon the question in issue, and a portion having

(Testimony of A. H. Wethey.)

no relevancy whatever; and counsel has agreed with me that we may read from the letters the portion which bears upon the subject matter of the action directly, or indirectly, and that we may retain the letters for our files, so that they may not be robbed of these matters, which are pertinent to other matters of business.

By Mr. MAYNARD.—Subject, of course, to such objections as to relevancy as counsel may hereafter see fit to make.

Q. I hand you now, Mr. Wethey a letter dated October 10th, 1899, and ask you to state what portion thereof—and ask you to read therefrom that portion which bears upon your testimony just given.

By Mr. MAYNARD.—I desire to save the benefit of an exception to this paper writing, on the ground that it is entirely irrelevant and immaterial, as having no tendency whatever to disprove the allegations contained in the bill of complaint of the plaintiff in this case, or to prove any of the averments of the answer of the defendant, relative to his being a purchaser of this land bona fide or for value; and further, I desire to interpose the objection to the testimony offered as being incompetent, upon the ground that it is not competent for Mr. Wethey to testify and use this form of correspondence in his own behalf. If Senator Clark himself were on the stand, it is possible he might be permitted to use this paper, which evidently bears his own signature, to refresh his recollection; but as far as Mr. Wethey is concerned, it is open to the objection that I here made.

(Testimony of A. H. Wethey.)

By the WITNESS.—These are my instructions and just what I acted upon.

By the EXAMINER (To the Witness).—Counsel is simply stating his objections.

Q. Now, I will ask you, Mr. Wethey, where you obtained that letter?

A. From our files in the office.

Q. You obtained it from the regular letter files that you keep in your office? A. Yes, sir.

Q. From whom was the letter received and when was it received?

A. It was received from Senator Clark, October 10th, 1899.

Q. Now, will you kindly read that portion of the letter which bears upon this case, Mr. Wethey?

By Mr. MAYNARD.—Please read the address, first, Mr. Wethey.

A. "Butte, Montana, October 10th, 1899.

A. H. Wethey, Butte, Montana.

I note what Mr. McLaughlin says about the timber which Mr. Cobban has secured. How many million feet is there comprised in it, and at what price can it be obtained? Does Mr. McLaughlin know where this timber is located? It seems to me it would be unwise to purchase it without first having it examined and estimated. He states as his reason for the advisability of the purchase, that it would compel the Blackfoot people to treat us properly on Nine Mile. It seems to me that we now have enough timber to accomplish that purpose.

(Testimony of A. H. Wethey.)

I note that McLaughlin starts tonight for Bridger from Missoula. I presume that McDonald has made all arrangements to have him accompanied by someone with the proper equipment. I certainly would do nothing with the Cobban timber until I have looked into it thoroughly.

Respectfully,

W. A. CLARK."

Q. And the signature, Mr. Wethey, what is that?

A. It is signed, "W. A. Clark."

Q. Did you, at or about the same time, receive any communication from Senator Clark with reference to this transaction? A. I think so.

By Mr. MAYNARD.—Will you please note that I interpose an objection to each and every one of these letters to the same effect as the objection last made by me, and let it all be understood that I make the same objection to all of the letters and the correspondence referred to and introduced by counsel.

Q. I hand you a letter, Mr. Wethey, and ask you where you obtained the same (Referring to letter which is marked "Number 2.")

A. Letter Number 2, I obtained from my letter files this morning in the office. The letter is dated Butte, October 11th, 1899.

Q. Who wrote that letter or dictated it?

A. W. A. Clark; it is signed by him.

Q. It is signed by W. A. Clark?

A. Yes, sir; it is signed W. A. Clark, and addressed to me.

(Testimony of A. H. Wethey.)

Q. And addressed to you? A. Yes, sir.

By Mr. BICKFORD.—I read from the letter so identified, as follows:

"I note what you say about the timber on the Big Blackfoot, and that Cobban has obtained options on sixty million feet, but that he would wait until we could examine the timber, if he thought we would be willing to take it. I note the price would be a dollar twenty-five cents per thousand, which McLaughlin thinks could be sold for $2.00 per thousand. We might have to wait a long time. I will decide this matter soon. It seems to me that as our principal object was to hold the Big Blackfoot company level as to our operations on the Nine Mile, that we have already sufficient timber for that purpose.

Respectfully,

W. A. CLARK."

Q. When were these letters received by you, with reference to the time when they bear date?

A. Usually got them the same day as they were dated.

Q. And they were letters that were handed to you by a messenger, as I understand it?

A. They were handed to me by the stenographer in my office.

Q. Handed to you by the stenographer in your office?

A. Yes, sir.

Q. I hand you letter dated October 12th, 1899, signed by W. A. Clark, and ask you where you obtained that letter?

(Testimony of A. H. Wethey.)

A. Letter marked Number 3, I received that in just the same way from the stenographer in my office.

Q. Well, where did you get it this morning?

A. I took it from the letter files in my office.

Q. To whom is it addressed?

A. It is addressed to me.

Q. And by whom is it signed?

A. Signed by W. A. Clark.

By Mr. BICKFORD.—I read from the letter identified by the witness:

"I hardly think it worth while for Cobban to take the trouble to come to Butte, as I will have no time to discuss the matter with him; and, in fact, I have about made up my mind not to purchase any more timber on the Blackfoot. I believe we have enough now to serve our purpose as mentioned. Perhaps it would be better for you to wire him that I cannot consider it, in order to prevent his coming.

(Signed) W. A. CLARK."

Q. That is the signature of W. A. Clark, affixed to this letter that you have mentioned, is it not?

A. Yes, sir; that is his handwriting.

Q. I will ask you to state how you received this letter, whether—these letters—whether in the direct course of business or not, and during the time the business was being transacted? A. Yes, sir.

Q. Now, I will ask you to state whether you ever have at any time had any correspondence with Mr. Cobban himself? A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. With reference to this matter?

A. Yes, sir.

Q. I hand you, Mr. Wethey, a paper dated Butte, Montana, October 13th, 1899, and marked Number 4, and ask you where you obtained that letter, that paper?

A. Mr. Cobban gave these papers to me this morning.

Q. Whereabouts did he give them to you?

A. In my office.

Q. Have you made a search to find the original of that paper among the files of your office?

A. Yes, sir.

Q. Did you succeed in finding it?

A. I did not.

Q. Have you any knowledge of having received such paper at any time? A. Yes, sir.

Q. When, about, was that paper received by you?

A. It was received in October, October 13th, 1899, Mr. Cobban brought it into my office.

Q. And you gave the original of that paper?

A. Yes, sir.

Q. Do you know where the original of that paper is now? A. No, sir.

Q. Have you made a search for it to find it?

A. I have some one looking over the files for it now.

Q. And you have not so far been able to find it?

A. No, sir; I have not.

Q. Now, I will ask you to state whether or no, in connection with that paper, you have had any correspondence with Mr. Cobban with reference thereto?

(Testimony of A. H. Wethey.)

A. Yes, sir.

Q. On what date did you have such correspondence?

A. I wrote him on October 17, in reference to that proposition.

Q. What is the date of the proposition itself?

A. The 13th of October, 1899.

Q. Will you state the nature of the paper referred to?

A. It is a proposition from Mr. Cobban, stating that he—

Q. Wait a moment, please. I just wanted to know the nature of the paper; what was this proposal?

A. This is a proposal to sell lumber or timber to Senator Clark.

By Mr. MAYNARD.—I think that the examination in regard to this proposal ought not to be continued at this time, for the reason that he alleged proposal is evidently an imperfect paper, as witness says it was handed to him this morning by Mr. Cobban, and he claims to have written it, although it is not signed by anybody, and it is evident the witness has not had sufficient time since receiving this paper, alleged to have been written by Mr. Cobban and sent to the witness, to make an adequate search in his office to get the original; and as it is now, it is simply an unsigned paper and does not claim to be an original; and I would suggest that the matter be deferred until this afternoon, or until such time as the witness can make a search of his office for the paper.

(Testimony of A. H. Wethey.)

By the WITNESS.—I knew the contents of this paper at the time, and I recollect its contents now, and I stated the contents of it to Mr. Cobban yesterday afternoon, when I asked him to see if he couldn't find the paper.

By Mr. BICKFORD.—There is no trouble about that; we will try to supply the original, or prove its loss this afternoon. These papers have been arranged in their chronological order, and we had better go on with the proof, in case the original is lost and cannot be found.

By Mr. MAYNARD.—Very well, in the meantime, I desire to interpose an objection to the introduction in evidence of the paper mentioned, for the reasons I have stated, and the original is the best evidence; and it is not the best evidence and should not be introduced until the original is produced or shown to have been lost.

A. I think it is quite likely that I destroyed the paper.

Q. I will ask you to state, if as a matter of fact it is a true copy of the original.

A. Yes, sir; I remember the terms of it very well. After the transaction was completed I didn't think the paper was of any further value, and I probably destroyed the original. We get so many papers and we have to get rid of them some way.

By Mr. MAYNARD.—Did you destroy or do you destroy papers of this character?

A. Yes, sir; tear them up.

(Testimony of A. H. Wethey.)

Q. You tear them up?

A. Yes, sir, the transaction in this case was completed and we had to get rid of them, we had so many papers.

Q. I will ask you to identify the paper marked Number 5.

A. The paper marked Number 5 is a letter dated Butte, Montana, October 13th, 1899, addressed to R. M. Cobban at Butte.

Q. And by whom is it signed?

A. Signed by W. A. Clark.

Q. Will you identify the other paper that is before you?

A. Yes sir. I identify the signature to the paper as that of W. A. Clark.

Q. And what is the other paper, Number 6; will you identify that?

A. Yes, sir, Number 6 is a letter dated October 17th, 1899, addressed to R. M. Cobban, Missoula, Montana, and is signed by myself.

Q. Now, we will, over the objection of counsel, read the paper.

By Mr. MAYNARD.—That is all right, read it into the record.

By Mr. BICKFORD.—The papers read as follows:

"Butte, Mont., Oct. 13, 1899.

W. A. Clark, Butte, Mont.

Dear Sir: I now have about 40,000,000 feet of titled timber on the Big Blackfoot River and about 30,000,000

(Testimony of A. H. Wethey.)

feet of script timber, making a total of 70,000,000 feet. I expect to have between now and December 15th, 60,000,000 feet in addition to this. This I think will be the limit that can be acquired at a price under $2.00 per thousand. This timber is principally pine and fir with some tamarack, and is as well located as that already purchased by yourself, or that owned by the Big Blackfoot Milling Co.

I will quote you a price of $1.25 per thousand for this timber; or, what would suit me better would be to make a loan not exceeding $75,000 to be made me on these lands as fast as title is examined and estimates furnished; such loan to be at the rate of $.75 per thousand for the timber on said lands. Said loan to be for one year from the 1st day of next January with interest at the rate of 10% per annum. In the event of making such a loan, I would be willing to give you an option to the 1st of February next for the purchase of all lands under mortgage, at the rate of $1.25 per thousand feet. If you are not prepared to say at once that you wish to purchase, it would give you nearly four months option to purchase at the same price now named to you, and if you do not purchase, you would have a loan that would be as safe as anything I know of. Money would only be required when title has been perfected and the abstracts examined and approved by your own attorney. I have maps and other data here with me, which could be submitted to you if desired.

I will consider it a favor if you will take the matter

(Testimony of A. H. Wethey.)

up at once and give an immediate answer, as I wish to go to Wisconsin and perfect arrangements for the transfer of the timber to Wisconsin parties, in case the above propositions do not meet with your approval.

Yours truly."

[Envelope]: "(W. A. Clark, Butte, Montana.)
(Two-cent stamp canceled Butte, Oct. 13, 8 P. M. 1899, Mont.)
Mr. R. M. Cobban,
Butte, Montana."

"General Office of William A. Clark, Butte, Montana.
Butte, Mont. October 13th, 1899.

Mr. R. M. Cobban, Butte, Montana.

Dear Sir: I have yours of the 13th inst., relating to the timber lands of the Big Blackfoot. I wrote a note to Mr. Wethey today to examine the maps and get all the information he could about these matters.

Respectfully yours,
W. A. CLARK."

"General Office of William A. Clark, Butte, Montana.
Butte, Montana, October 17th, 1899.

Mr. R M. Cobban, Missoula, Montana.

Dear Sir: Mr. Clark tells me that he will make the loan of $30,000 to you on the forty million feet of timber to which you have already secured title on the basis proposed, namely that he will advance 75 cents per thousand on the timber, all the deeds to be in his name,

(Testimony of A. H. Wethey.)

and he to have the option of four months from the date of the deeds to take up the timber by paying 50 cents per thousand more or $1.25 per thousand in all. He will give you an agreement to reconvey the property to you in case he does not exercise the option upon your refunding the amount of the loan with interest at the rate of 10 per cent per annum. I have written Mr. McLaughlin giving him the details of the transaction and will await his report.

In regard to making a further loan than the $30,000, Mr. Clark has not yet decided. As soon as he decided whether he will make an additional loan or not I will advise you.

Respectfuly yours,

A. H. WETHEY,

Secretary."

Q. I will ask you to identify this letter marked No. 7.

A. The letter is marked No. 7, and it is dated Butte, Montana, October 16th, 1899, and is addressed to A. H. Wethey, Butte, Montana.

Q. By whom is it signed, Mr. Wethey?

A. It is signed by W. A. Clark.

Q. I will ask you to state whether you received that letter at Butte, Montana, and in the usual course of business.

A. I did, yes, sir.

By Mr. BICKFORD.—The letter reads as follows: "Mr. A. H. Wethey, Butte, Montana.

(Testimony of A. H. Wethey.)

Dear Sir: I have yours of the 16th inst. and note contents. I note that Mr. Cobban will need from sixty to seventy thousand dollars in all, as an advance on timber lands, and that on lands and timber located by script, he will require fifty cents per thousand, and on that located seventy-five cents per thousand. I will consider this proposition and let you know. So far as the 40,000,000 feet are concerned, that of course, may be regarded as settled, and you may advise Mr. McLaughlin of the fact and ask him to have the timber examined and report made thereon as soon as practicable.

Respectfully yours,

(Signed) W. A. CLARK."

Q. I hand you now paper marked No. 8, and ask you to identify that.

A. Letter marked No. 8, dated at Butte, Montana, October 16th, 1899, addressed to A. H. Wethey, Butte, Montana, and signed by W. A. Clark.

Q. That letter referred to the timber transaction between Mr. Clark and Mr. Cobban, did it not?

A. Yes, sir.

Q. And it was received by you in the ordinary course of business? A. Yes, sir.

Q. Where did you receive this letter, Mr. Wethey?

A. It was given to me by my stenographer in the office.

Q. When?

A. I got that this morning out of my fil-

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—The letter referred to reads as follows:

Butte, Montana, October 16th, 1899.

Mr. A. H. Wethey, Butte, Montana.

Dear Sir: I have yours of the 14th inst. relating to Mr. Cobban's proposal for a loan, and note his statement that he has acquired title to 40,000.000 feet of timber on the Blackfoot, which he and his relatives have paid for. That he is willing to have the deeds to the land put into my name, so as to make my security absolute to the land. I understand that the amount of the loan would be seventy-five cents per thousand, which would amount to thirty thousand dollars, for which he is willing to pay ten per cent per annum for four months. This arrangement to be coupled with an option to me, allowing me to purchase the timber at the end of four months at a dollar and a quarter per thousand, he requiring me to execute an agreement to reconvey in case I do not avail myself of the option. No advance will be required by him until the timber has been examined by McLaughlin and the titles passed upon by Mr. Bickford or some other attorney. I note that his desire is to realize the money he has invested, and to secure additional timber lands. I notice that he has thirty million feet located with script. Would he also give me an option on the thirty million feet, with an additional loan of what he needs, also upon an advance of seventy-five cents per thousand upon that? I am willing, all these

(Testimony of A. H. Wethey.)

conditions being complied with, to make a loan on the forty million feet of timber.

Respectfully Yours,

(Signed) W. A. CLARK."

Q. I hand you letter, now, Mr. Wethey, marked No. 9, and ask you where you obtained that letter?

A. It is a letter marked No. 9, dated Butte, Montana, October 20th, 1899, addressed to A. H. Wethey, Butte, Montana, and signed by W. A. Clark. I took this out of my letter files this morning.

Q. I will ask you to state, Mr. Wethey, whether you received that letter in the usual and ordinary course of business? A. I did, yes, sir.

Q. And you recognize the signature as being the signature of W. A. Clark? A. Yes, sir.

By Mr. BICKFORD.—Said letter No. 9, reads as follows:

Butte, Montana, October 20th, 1899.

Mr. A. H. Wethey, Butte, Montana.

Dear Sir: I have your letter of the 19th inst. which I return. I have no objection to the proposition which Mr. Cobban has made to us, that is to say, I will make the loan for twelve months, coupled with a four months' option to take the timber at a dollar and twenty-five cents per thousand, and should I not take it, of course would hold the deeds as security until the money is repaid. It may run for a year, if he so desires. I would be willing to make a loan on the same basis for an additional sixty million feet of timber, that is to say, to

(Testimony of A. H. Wethey.)

advance seventy-five cents per thousand on located lands for which he is to procure titles and fifty cents per thousand upon lands upon which he has located script. Of course everything would be subject to McLaughlin's approval after having the timber estimated, and the approval of Mr. Bickford as to the legal character of the conveyance.

Respectfully yours,

W. A. CLARK."

Q. I will hand you another paper, which I ask you to state where you obtained?

A. I took this out of my letter files this morning, from my office.

Q. Can you identify it and as to whom it is addressed?

A. The letter is marked No. 10, and addressed from the United Verde Copper Company's office in New York, November 18th, 1899, and addressed to—

Q. Addressed to A. H. Wethey?

A. Yes, sir, and signed by W. A. Clark.

Q. I will ask you to state if that letter is one that you received in the ordinary course of business.

A. It is, yes, sir.

Mr. BICKFORD.—I read from the letter as follows: "I note that Cobban is prepared to turn over timber lands to the amount of 35,385,000 feet, as soon as deeds and abstracts have been passed upon by Bickford. I note that the amount that I was to loan on them ag-

(Testimony of A. H. Wethey.)

gregates $35,538.75. I note that Cobban is now desirous of selling outright the land and timber at a discount of five per cent. I will consider this matter, and probably later wire you.

Respectfully yours,
(Signed) W. A. CLARK."

Q. Now, referring to the matter of the land as mentioned in the paragraph just read to you, Mr. Wethey, I will ask you what, if anything, you did with reference to making the loan that is spoken of.

A. I made the loan.

Q. Do you remember when it was that the loan was made? A. Sometime in November, I think.

Q. Well, I will—

A. About the 25th of November, I guess it was that the loan was made.

Q. I hand you a note and ask you if that is the note that was taken at the time when the loan was made?

A. Yes, sir, that is the identical note; I paid that amount in three payments. I have given you already the first two. This is $41,538.75.

Q. I will ask you to state in what manner that sum of $41,538.75 was made out, and at what time the payments were made which are embraced within the total sum of the note?

A. The first payment I made was November 17th, to W. A. Clark & Brother, as previously stated. The amount was $10,063.30 and there was paid to Cobban at the same time $29,682.95, and on November 25th I

(Testimony of A. H. Wethey.)

paid him the balance amounting to $1,792.50. These three amounts making up the total of the note $41,538.75.

Q. I will ask you to state if at the time you made the last payment you wrote any letter to Mr. Cobban concerning the matter? A. I think I did.

Q. I will ask you to say whether you ever received any letter from Mr. Cobban concerning the payment of the last amount to him, and if you have that letter?

A. Yes, sir, did you want me to identify these?

Q. Where did you get this letter, Mr. Wethey?

A. I got this through the mail.

Q. And this morning, where did you find it?

A. I found it in my files.

Q. In your regular office files in the office?

A. Yes, sir.

Q. And when is it dated?

A. Dated, Missoula, Montana, November 28th, 1899, and it is addressed to A. H. Wethey, Secretary, Butte, Montana.

Q. And by whom is it signed, Mr. Wethey?

A. It is signed by R. M. Cobban.

Q. You know the signature of R. M. Cobban and can identify it? A. Yes, sir.

By Mr. BICKFORD.—We will offer in evidence the letter written by Mr. Cobban, and identified by the witness. The same reads as follows:

(Testimony of A. H. Wethey.)

"R. M. Cobban. Samuel Dinsmore.

COBBAN & DINSMORE.

Real Estate and Loans.

Missoula, Montana, Nov. 28, 1899.

Mr. A. H. Wethey, Sec'y, Butte, Montana.

Dear Sir: Yours of the 25th inst., with enclosure, check for $1792.50, received, for which accept thanks.

Yours truly,

R. M. COBBAN."

Q. Now, with reference to the note which you have identified, Mr. Wethey, I will ask you to state whether that is the note concerning which you have testified, and being evidence of the loan concerning which you have given evidence.

A. Yes, sir, that is the identical note, and this is my writing across the face of it, "Canceled."

Q. I will ask you whether you received or sent any communication with reference to that, and if so, when you so wrote?

A. I sent the canceled note to Mr. Cobban, December 16th, 1899.

Q. Have you that letter with you that you wrote?

A. I have the original letter, I believe, that I wrote to Mr. Cobban, as well as the note.

Q. Where did you get that original letter?

A. Mr. Cobban gave it to me this morning.

Q. Now, you identify it as being the identical letter that you wrote at that time, and that you sent to him?

A. Yes, sir.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—We will offer at this time, if your Honor please, the letter which has been testified to by the witness, and which may be marked as an exhibit.

By the EXAMINER.—I will mark the letter exhibit No. 285, and the note, for $41,538.75, exhibit No. 286.

By Mr. MAYNARD.—I object to the reception in evidence of these papers that have been offered by counsel for the defendant, namely exhibit No. 285, being the letter of the witness to R. M. Cobban, and the note, which is marked "Defendant's Exhibit No. 286," for the reason that the same is irrelevant and immaterial to the issues in this case, and it is also incompetent for any purpose whatever, either to disprove the allegations of the complainant's bill of complaint, or to prove the averments set forth in the answer of the defendant.

By Mr. BICKFORD.—I will read Defendant's exhibit No. 285.

Defendant's Exhibit No. 285.

General Office

of

WILLIAM A. CLARK,

Butte, Montana.

Butte, Montana, December 16th, 1899.

Mr. R. M. Cobban, Missoula, Montana.

Dear Sir: I return herewith, canceled, your note for $41,538.75 payable to the order of W. A. Clark. I received your sight draft this morning through the First

(Testimony of A. H. Wethey.)

National Bank here for $24,230,95, with the agreement with Mr. W. A. Clark to reconvey the property on which the loan was made to you.

Respectfully yours,

A. H. WETHEY,

Secretary.

(Enc. 1)

[Endorsed]: Dfts. Exhibit 285. H. N. Blake, Examiner.

Defendant's Exhibit No. 286, is as follows:

Defendant's Exhibit No. 286.

COBBAN LOAN AND REALTY CO.,

Real Estate and Loans,

Butte, Montana.

$41,538.75. Butte, Montana, Nov. 18th, 1899.

On or before January 1st, 1901, after date, for Value Received, I promise to pay to the order of W. A. Clark Forty one thousand five hundred thirty eight & 75/100 Dollars, at Clark's Bank, Butte, Montana, with interest at the rate of 10 per cent per annum from date hereof until paid. Interest payable at maturity.

Dec. 20, 1899. R. M. COBBAN.

Due ———, 189——.

W. A. CLARK & BRO.,

Bankers.

No. 48759.

Butte City, Mont.

(Testimony of A. H. Wethey.)

[Endorsed]: (Canceled). $8.30. Canceled U. S. Internal Revenue Stamps. Dfts. Exhibit 286. H. N. Blake, Examiner.

Q. I will ask you now, Mr. Wethey, if you can identify this paper which I hand you, as the one which you have spoken of heretofore? A. Yes, sir.

Q. Will you please explain to the Court what the paper is?

A. It is a note dated October 31st, 1899, for ten thousand dollars.

Q. Where did you obtain that note, Mr. Wethey?

A. That note was given to me by R. M. Cobban.

Q. Where did you get the paper that you now have?

A. This note, do you mean?

Q. Yes, sir, that note for ten thousand dollars.

A. He gave it to me this morning.

Q. Is that the note that you have identified as payable to the order of W. A. Clark & Brother?

A. Yes, sir, this is the one dated October 31st, 1899, and upon which I paid sixty-three dollars and thirty cents interest.

Q. I will ask you to state if that is a part of the money that was loaned to Mr. Cobban, that you have testified about?

A. Yes, sir, ten thousand dollars was loaned by the bank separately, and was at the rate of seventy-five cents per thousand feet on the timber. We took up this note from the bank, and that was a part of the second note for $41,538.75.

(Testimony of A. H. Wethey.)

Q. This, you say, has been identified by you, this exhibit No. 288.

A. Yes, sir, that is the note that I identify.

By Mr. BICKFORD.—I will offer this note in evidence. The same reads as follows:

Defendant's Exhibit No. 288.

$10,000.00 Butte, Montana, Oct. 31, 1899.

Thirty days after date, without grace, for value received, we or either of us promise to pay to the order of W. A. Clark & Brother, a copartnership composed of W. A. Clark and J. Ross Clark, ten thousand & no/100 dollars, negotiable and payable at their Banking-House in Butte, Montana, with one per cent interest per month from date until paid both before and after judgment, and reasonable Attorney's Fees, if suit be instituted on this note. Interest payable monthly.

R. M. COBBAN.

No. 9363. Due Nov. 30, 1899.

[Endorsed]: $2.00. Canceled U. S. Internal Revenue Stamps. Dfts. Exhibit 288. H. N. Blake, Examiner.

Q. I will ask you to state with reference to this matter, Mr. Wethey, and that is, as to whether or not the banking firm of W. A. Clark & Brother, as bankers, and W. A. Clark, individually, is a separate concern, or whether they are carried on jointly or have any connection with each other?

(Testimony of A. H. Wethey.)

A. They are entirely separate and distinct and I have nothing whatever to do with the bank.

Q. Does Senator Clark have any active participation in the affairs or management of the bank?

A. No, sir.

Q. Would he know anything of the fact of a loan of this kind being made? A. No, sir.

Q. I hand you a letter and I ask you where you obtained that letter, and when?

A. I took this letter out of my letter files at the office this morning.

Q. And it is addressed to whom?

A. Addressed to me.

Q. And what is the date of it?

A. Do you want the particulars of it?

Q. No, just the date of it, Mr. Wethey.

A. December 5th, 1899.

Q. And by whom is it signed?

A. It is signed by W. A. Clark.

Q. You identify the signature, do you, as being that of W A. Clark?

A. Yes, sir, it is marked No. 12.

By Mr. BICKFORD.—I read from the letter just identified by the witness, as follows:

"I note also that I have until February first to decide about the Cobban option on the timber—

By Mr. BICKFORD.—The head of the letter is as follows: "United States Senate, December 5th, 1899."

(Testimony of A. H. Wethey.)

"I note that Cobban is willing to extend the option and to receive cash less five per cent, for two weeks, which would be about the 15th inst. I am not very particular about it, but I may conclude to take it up.

Respectfully yours,

(Signed) W. A. CLARK."

Q. I hand you a paper for identification, Mr. Wethey, and ask you where you obtained that paper?

A. I took this out of my letter files this morning.

Q. Was it a letter received in the usual and ordinary course of business? A. Yes, sir.

Q. Where is it dated?

A. It is dated "United States Senate, Washington, D. C., December 13th, 1899," and addressed to "A. H. Wethey, Butte, Montana.

Q. And by whom is it signed, Mr. Wethey?

A. It is signed by W. A. Clark, and it is marked No. 13.

By Mr. BICKFORD.—We will introduce the letter in evidence. It reads as follows:

"Referring to your valued favor of the 1st inst., concerning the Cobban proposition, I think it would be well to take up the matter, and wire to him accordingly.

Referring to your letter of the 1st inst., relative to the Cobban proposition, I advise payment to him less five per cent discount.

(Signed) W. A. CLARK."

Q. I hand you a letter for identification, and ask you where you obtained that letter?

(Testimony of A. H. Wethey.)

A. I took that letter out of my letter files this morning.

Q. I will ask you to state where and when it is dated.

A. It is dated "United Verde Copper Company, New York, January 22d, 1900."

Q. To whom is it addressed?

A. It is addressed to A. H. Wethey, Butte, Montana.

Q. By whom is it signed?

A It is signed by W. A. Clark, and it is marked No. 14. All my letters to the Senator are destroyed, they are never filed; they would take up too much room.

By Mr. BICKFORD.—The letter identified by the witness reads as follows:

"I have your valued favors of the 3d and 15th, and note contents. I return Mr. McLaughlin's letter. I cannot understand why he should think that we did not have sufficient timber on the Big Blackfoot to stand the other people off. If we can make them open their dam, to let our logs through, that is all that is necessary, and I am sure the large amount that we now have will be sufficient for that purpose. In any event, as I have stated, I do not desire now to increase my purchase of timber. I do not expect the arrangement with Cobban for advances to go on ad libitum, but I think the amount you stated was sufficient, even if I am secure on my agreement, but I do not care to make any additional contracts of that kind. It is very probable that there will be a chance to buy this timber, should I wish to do so, two or three months hence. However, if he is very

(Testimony of A. H. Wethey.)

anxious about it and sells it to the other people and pays off the loan, I shall be satisfied.

Respectfully Yours,

W. A. CLARK.

Whereupon a recess was taken until two o'clock P. M. same day.

Friday, April 11th, 1902, 2 P. M.

Hearing resumed.

A. H. WETHEY, recalled for further direct examination by Mr. Bickford.

Q. I hand you, Mr Wethey, a contract dated the 27th day of January, 1900, between W. A. Clark and R. M. Cobban, and ask you to look it over and see if that is an agreement which you know of having been made between the parties mentioned therein?

A. Yes, sir.

Q. You have seen this contract before, have you?

A. Yes, sir; it has my writing on it.

Mr. BICKFORD.—We offer in evidence at this time the contract of which I have just given the date, and ask that it be marked for identification.

The EXAMINER.—This will be marked defendant's Exhibit No. 289.

Mr. MAYNARD.—Counsel for the Government objects to the reception in evidence of this contract made between Mr, Clark, the defendant, and Mr. Cobban, on the ground that it is immaterial and irrelevant to any of the issues in this case, and that it is entirely incom-

(Testimony of A. H. Wethey.)

petent either to answer any of the allegations in the complainant's bill of complaint or to sustain any of the averments in defendant's answer, having no tendency whatever to sustain the proposition that the defendant was a bona fide and innocent purchaser for value of any of the land in controversy that is named in this contract or in any of the deeds or abstracts that have been previously mentioned and the objection that was made this morning is renewed not only to this specific offer, but to all of a similar character which shall be offered this afternoon.

Mr. BICKFORD.—I read from the agreement:

Defendant's Exhibit No. 289.

"This agreement, made the 27th day of January, A. D. 1900, by and between W. A. Clark of Silver Bow County, Montana, party of the first part, and R. M Cobban of Missoula county, Montana, party of the second part, witnesseth:

Whereas, the said party of the second part has this day made, executed and delivered to the said party of the first part, his certain promissory note in writing, bearing date this 27th day of January, A D. 1900, for the sum of nineteen thousand nine hundred and fifty-seven and 50/100 (19,957.50) dollars, payable on or before January 1st, 1901, at the Bank of W. A. Clark & Bro., Montana, with interest at ten per cent per annum from date hereof until paid, interest payable at maturity; and

(Testimony of A. H. Wethey.)

Whereas, to secure the payment of said note the said party of the second part and Alice M. Cobban, his wife, have made, executed and delivered to the said party of the first part a certain deed, dated January 9th, 1900, wherein the consideration expressed is the sum of nine thousand four hundred eighty-one and 25/100 (9,481.25) dollars covering and conveying therein certain lands and real estate therein described, situate in the county of Deer Lodge, State of Montana, and also a certain other deed, dated the said 9th day of January, 1900, wherein the consideration expressed is the sum of eighteen thousand eight hundred and fifty (18,850) dollars covering and conveying therein certain lands and real estate therein described, situate in the county of Missoula and State of Montana, and also a certain other deed, dated January 26th, A. D. 1900, wherein the consideration expressed is the sum of four thousand nine hundred thirty-one and 25/100 (4,931.25) dollars covering and conveying therein certain lands and real estate therein described, situate, lying and being in the county of Missoula, State of Montana, and which said lands and real estate are particularly described in said mentioned deeds by government subdivisions;

Now, therefore, it is hereby agreed and understood by and between the parties hereto that the said above-mentioned conveyances are mortgages to secure the payment of the note hereinbefore mentioned;

And it is further agreed and understood by and between the parties hereto, that if at any time within 90

(Testimony of A. H. Wethey.)

days from date hereof the said party of the first part shall elect to pay the said party of the second part, his heirs or assigns, the sum of thirteen thousand three hundred and five (13,305) dollars, and shall cancel said note and deliver same to said second party, then in that event the said deeds and conveyances hereinbefore mentioned shall be and become absolute conveyances of the premises therein described.

In witness whereof, the said parties have hereunto set their hands and seals the day and year herein first above written.

R. M. COBBAN. [Seal]
W. A. CLARK. [Seal]

With the indorsement upon the back of the agreement:

"Paid Cobban 4/30/900 $13,305.00 and returned his note to him for $19,957.50."

Q. In whose handwriting is the indorsement upon the back of the agreement?

A That is mine.

Q. And you made that indorsement, did you, at the time when it purports to have been made?

A. Yes, sir.

Q. What have you to say with reference to that transaction and what was done at the time when this indorsement was made?

A. I gave Mr. Cobban a New York draft for $13,305.

Q. For what purpose did you give him that draft?

(Testimony of A. H. Wethey.)

A To complete that transaction, Mr. Clark having decided to buy the timber.

Q. Now, this morning you were talking about the check and draft and the original document which were used in completing these transactions. I will ask you to state if since the adjournment at the noon hour you have made any investigation with reference thereto and have you since that time found any of the original documents among your papers? A. Yes, sir.

Q. I will ask you to identify the instrument which I now hand you?

A. This is the original agreement made between W. A. Clark and R. M. Cobban.

Q. What is the date of it?

A. Dated the 18th day of November, 1899, by which W. A. Clark loaned to Cobban the sum of $41,538.75, and he agrees upon payment of the loan with interest, and there is the sight draft drawn by Cobban that was paid by me. The draft attached is the original draft which completes the payment of the loan.

Q. Do I understand you all right?

A. Well, Mr. Clark exercised his privilege—had an option for four months on the property—of taking it up and paying the balance, so that the loan was canceled.

Mr. BICKFORD.—We offer now for a part of our case this paper with the draft attached as an exhibit.

The EXAMINER.—The contract will be marked Defendant's Exhibit No. 290 and the draft will be marked Defendant's Exhibit No. 291.

(Testimony of A. H. Wethey.)

Mr. BICKFORD.—The agreement which we now offer in evidence reads as follows:

Defendant's Exhibit No. 290.

"This agreement made the eighteenth day of November, A. D. 1899, between W. A. Clark of Silver Bow County, Montana, by A. H. Wethey, his attorney in fact, party of the first part and R. M. Cobban of Missoula County, Montana, party of the second part, witnesseth:

Whereas, the said party of the first part has loaned to the party of the second part, the sum of forty-one thousand five hundred thirty-eight and 75/100 dollars, which said note is evidenced by a promissory note executed by said R. M. Cobban payable to order of said W. A. Clark bearing date November eighteenth, 1899, and due on or before January first, 1901, with interest at per cent per annum from date hereof until paid, interest payable at maturity; and

Whereas, to secure the repayment of said loan, the said party of the second part has made, executed and delivered to the said party of the first part, one certain deed, executed by said party of the second part and Alice M. Cobban, his wife, to the said party of the first part, bearing date the eleventh day of November, 1899, by which deed said R. M. Cobban and wife, for a consideration of thirty-five thousand five hundred twelve and 50/100 dollars, has conveyed to said W. A. Clark certain lands and real estate, situated in Missoula county, Montana, covering lands therein described, a

(Testimony of A. H. Wethey.)

copy of which said conveyance is retained by said party of the second part; and said note being further secured by a certain other deed of conveyance, dated the thirteenth day of November, 1899, executed by the said R. M. Cobban and Alice M. Cobban, his wife, to the said party of the first part for a consideration of thirty-three thousand seven hundred eighteen and 75/100 dollars, conveying certain lands and real estate therein described, situated in Deer Lodge County, Montana, a copy of which said conveyance is retained by the said party of the second part;

Now, therefore the said two conveyances are agreed to be mortgages to secure the repayment of said promissory note, provided, that if the said first party shall pay to the said second party on or before the first day of February A. D. 1900, the further sum of twenty-seven thousand six hundred ninety-two and 50/100 dollars, and shall cancel and deliver up to said second party the said promissory note aforesaid, then in that case, it is hereby agreed that the said conveyances hereinbefore mentioned shall be and become absolute conveyances and the title to the lands and real estate, secured in said conveyances shall absolutely vest in the said party of the first part, or instead thereof:

It is further agreed that if the said party of the first part shall pay to said second party, on or before the twenty-fifth day of November, A. D. 1899, the sum of twenty-four thousand two hundred thirty and 95/100 dollars and shall cancel and deliver up the said prom-

(Testimony of A. H. Wethey.)

issory note to said second party, then and in that event, the title conveyed by the said two conveyances aforesaid shall be and become absolute and shall vest the title to the lands and real estate therein described in the said party of the first part, absolutely.

In witness whereof the said parties have hereunto set their hands and seals the day and year, first above written.

WILLIAM A. CLARK. [Seal]

_____. [Seal]

_____. [Seal]

Mr. BICKFORD.—I will state to the Examiner that the paper shows two acknowledgments written in blank which have never been executed, but as I regard them as utterly immaterial, we won't read them into the record.

Mr. MAYNARD.—Oh, yes; just read the whole paper, please.

The EXAMINER.—Let it appear at the request of counsel for the Government these blank acknowledgments were read.

"State of Montana,
County of Silver Bow. } ss.

On this ——— of November, A. D. 1899, before me _____, a notary public in and for Silver Bow County, Montana, personally appeared A. H. Wethey, known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of W. A. Clark, and

(Testimony of A. H. Wethey.)

acknowledged to me that he subscribed the name of W. A. Clark thereto as principal and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate above written.

_____,

Notary Public in and for Silver Bow County, Montana.

State of Montana,
County of Silver Bow. } ss.

On this ——— day of November, A. D. 1899, before me, _____, notary public in and for Silver Bow County, Montana, personally appeared R. M. Cobban, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my notarial seal, the day and year in this certificate above written.

_____,

Notary Public in and for Silver Bow County, Montana."

The WITNESS.—I would like to explain about that paper.

Q. Now, that I have read the instrument, will you kindly explain about the instrument and why it is that the acknowledgments were not taken?

A. The instrument was prepared by Mr. Cobban, and recites that A. H. Wethey was the attorney in fact of W.

(Testimony of A. H. Wethey.)

A. Clark, which was not correct, and I therefore did not sign it.

Q. Is that the reason why the instrument itself was signed by Mr. Clark himself?

A. Yes, sir; I sent it to him in the East, and asked him to sign it if it was satisfactory, and he signed it and returned it, and said he did not think it was necessary to have his acknowledgment taken.

(By Mr. MAYNARD.)

Q. Let me ask you at this point—I understand that that is spelt William A. Clark there. Does he write it interchangeably?

A. Why in writing his correspondence he always signs W. A. Clark, but in legal documents that require his full name, he writes it William A. Clark.

Mr. BICKFORD.—The Exhibit No. 291 which was attached to the foregoing instrument reads as follows:

Defendant's Exhibit No. 291.

Revenue Stamp.

FIRST NATIONAL BANK OF BUTTE,

$24,230.95/100. Butte, Montana, Dec. 15, 1899.

Pay to the order of the First National Bank of Butte, twenty-four thousand two hundred thirty & 95/100 dollars.

R. M. COBBAN.

To W. A. Clark, Esq., Butte, Montana.

Paid First Natl. Bank by G. D. Watt.

Q. I will ask you what that draft was that I have

(Testimony of A. H. Wethey.)

just read Mr. Wethey, and what it shows in connection with the contract.

A. This draft has reference to the timber purchased, according to the deed November 11th and November 13th, 1899, and Mr. Clark had an option for four months on the timber, and he had loaned Mr. Cobban 75 cents per thousand on the timber with the privilege of taking it up, and Mr. Cobban needed money and he came in and offered to allow us five per cent discount if we would take it up and pay the balance, and the offer was submitted to Mr. Clark, and he authorized me to accept it. I therefore advised Mr. Cobban of the fact and Mr. Cobban drew on us for the balance of the purchase price as stated in the deed.

Q. Then I will ask you to state if the draft itself was an evidence of the close of the deal or transaction?

A. Yes, sir; that closed the deal.

Q. Now, you speak of a note. I will ask you to look at that and say whether or not that the note which I now hand you is the note which you have referred to in your testimony?

A. No, sir; the note I referred to is the one we had before noon, for forty-one thousand five hundred and thirty-eight dollars and seventy-five cents.

Mr. BICKFORD.—Those are all in as exhibits, as I understand?

The EXAMINER.—Yes; those are in as this morning's exhibits.

Mr. BICKFORD.—All right. I was mistaken, then,

(Testimony of A. H. Wethey.)

about the note. Now, Mr. Examiner, may I have the exhibits that I passed to you a few moments ago—the contract, that was the first one, and the one I called to the attention of the witness just after commencing the examination.

The EXAMINER.—Yes, that is Exhibit No. 289, the agreement between Clark and Cobban dated January 27, 1900.

Q. Now, I will ask you with reference to this note, whether or not that note bears any relation to the contract which you have in your hand and which is marked Defendant's Exhibit No. 289, and if so what relation that note bears to the exhibit named?

A. This note for nineteen thousand nine hundred and fifty-seven dollars and fifty cents is the note referred to in this particular agreement.

Mr. BICKFORD.—Now, if your Honor please, we offer that note in evidence, and ask that it be marked as an exhibit.

The EXAMINER.—Defendant's Exhibit No. 292.

Mr. MAYNARD.—The note now offered in evidence is objected to as immaterial and irrelevant on the ground heretofore stated, and all of these other papers now being offered are objected to on the same ground.

Mr. BICKFORD.—I read Defendant's Exhibit No. 292, as follows:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 292.

$19957.50 Butte, Montana, Jan. 27th, 1900.

On or before Jan. 1st, 1901, after date for value received, I promise to pay to the order of W. A. Clark nineteen thousand, nine hundred fifty-seven & 50-100 Dollars, at bank of W. A. Clark & Bro., Butte, Montana, with interest at the rate of 10 per cent per annum from date hereof until paid. Interest payable maturity.

Due ———, 189——.

W. A. Clark & Bro., Bankers.

No. 49411.

Butte City, Mont.

It shows the signature torn off, and on the end in printing is the endorsement "Cobban Land & Realty Company, Real Estate and Loans, Butte, Montana. On the back are revenue stamps such as required by law and in sufficient quantity canceled, and the endorsement, interest paid to Feb. 10/1900."

Q. Now, I will ask you to state, Mr. Wethey, whether you have in your possession at this time anything in the shape of checks, drafts or other instruments in writing evidencing the various payments which you have testified as having been made for these timber deals?

A. I have several drafts that were issued in payment.

Q. Do the drafts which you have cover all the payments which you have testified concerning?

A. Not all, I think; most of them.

Q. Well, go on.

(Testimony of A. H. Wethey.)

A. Will I give them to you?

Q. If you will give them to me, so that I may introduce them in evidence, after submitting them to counsel upon the other side; just identify them first, and then I will hand them to him for examination.

A. W. A. Clark & Brother's draft on the First National Bank of New York, dated July 24th, 1899, thirteen thousand and ninety-three dollars and seventy-five cents.

(By Mr. MAYNARD.)

Q. Did you find all of these original checks?

A. I am not sure whether I have got them all here or not. I hardly think so.

Mr. BICKFORD.—We offer this draft in evidence and ask to have it marked for identification.

The EXAMINER.—Defendant's Exhibit No. 293.

Mr. BICKFORD.—I read Defendant's Exhibit No. 293 as follows:

Mr. MAYNARD.—I object to the reception in evidence of this check and to all of the others that are about to be offered for the reason that they are entirely immaterial and irrelevant to this issue and entirely incompetent to sustain any of the averments in defendant's answer.

Mr. BICKFORD.—Reading draft:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 293.

"No. 115412.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Jul. 24, 1899.

Pay to the order of H. W. McLaughlin $13093.75 thirteen thousand ninety-three & 75/100 dollars.

W. A. CLARK & Brother,

To First National Bank, New York City. H.

The endorsements on the back of this instrument are: H. W. McLaughlin.

Received payment through New York Clearing-House Aug. 1, 1899, The National Park Bank of New York. Pay National Park New York City, or order First National Bank Missoula, Montana, John M. Keith, Cashier.

The WITNESS.—I will say that that check was issued in payment for the two deeds dated July 29th, 1899. Shall I give the amount of those deeds?

Q. We have the amount already, and with your explanation at this time, the transaction is perfectly clear. Now, the next draft that you have, Mr. Wethey; will you kindly state?

A. The next draft is dated September 13th, 1899, and is for $5,000.00.

Mr. BICKFORD.—We offer this draft in evidence.

(Draft marked Defendant's Exhibit No. 294.)

Mr. BICKFORD.—I read Defendant's Exhibit No. 294, as follows:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 294.

No. 117214.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Sep. 13, 1899.

Pay to the order of H. W. McLaughlin $5000.00 five thousand dollars.

W. A. CLARK & BROTHER,

G.

To First National Bank, New York City.

Endorsed on the back: "H. M. McLaughlin. Received payment through New York Clearing-House, Sep. 21, 1899. The National Park Bank of New York. Pay National Park Bank, New York City, or order First National Bank, Missoula Montana. John M. Keith, Cashier."

Q. I will ask you to state in what respect that was a payment and concerning what deed or other transaction that you have heretofore testified to?

A. That was in connection with the deeds dated September 16th, 1899.

Q. What is the next draft that you have?

A. The next draft is September 19th, 1899, for $31,906.25. That draft, with the $5,000 last testified to, completes the payment for the timber stated in the two deeds dated September 16th, 1899.

The EXAMINER.—That will be Defendant's Exhibit No. 295.

Mr. BICKFORD.—I read Defendant's Exhibit No. 295 as follows:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 295.

No. 117416.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Sep. 19, 1899.

Pay to the order of H. W. McLaughlin $31,906.25, thirty-one thousand nine hundred six 25/100 dollars.

W. A. CLARK & BROTHER,

G.

To First National Bank, New York City.

The endorsements on the back of this instrument are: "H. W. McLaughlin. Received payment through New York Clearing House. Sep. 27, 1899. The National Park Bank, of New York. Pay National Park Bank, New York City, or Order First National Bank, Missoula, Montana. John M. Keith, Cashier."

Q. And that as I understand it completes the payment upon certain deeds?

A. Certain deeds dated September 16th, 1899.

Q. What is the next draft you have in your possession, Mr. Wethey?

A. The next draft I have is dated November 18th, 1899, and is payable to the order of R. M. Cobban for the sum of $27,682.95.

Mr. BICKFORD.—We offer this draft in evidence.

The EXAMINER.—Marked Defendant's Exhibit No. 296.

Mr. BICKFORD.—I read Defendant's Exhibit No. 296 as follows:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 296.

No. 119624.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Nov. 18, 1899.

Pay to the order of R. M. Cobban $27,682.95/100 twenty-seven thousand six hundred eighty-two 95/100 dollars.

W. A. CLARK & BROTHER.

To First National Bank, New York City.

The endorsement on the back of this instrument are: "R. M. Cobban. Received Payment through New York Clearing House Nov. 21, 1899, the Bank of New York, N. B. A. Pay to the Order of any Bank, Banker or Trust Co., First National Bank of Butte, Montana, E. B. Weirick, Cashier."

Q. What is the next draft you have?

A. That draft now that I just gave you was in connection with the deed dated November 11th, and November 13th, 1899. That is the last of them.

Q. Well, the draft that you have mentioned completed the payment for the deeds dated as you have stated there?

A. Yes. Shall I give the details so as to have them all together.

Q. I wish you would give the details?

A. The total payment to be made for the two deeds was $69,231.25. As I already testified, Mr. Cobban allowed us 5 per cent discount for completing the purchase of that timber before our option expired. The 5 per cent discount amounted to $3,461.55, leaving $65,-

(Testimony of A. H. Wethey.)

769.70 actually paid in cash. I will give you the details of those payments if you like.

Q. I wish you would go on and give the details of those payments?

A. The details of the payments were as follows: November 17th, paid to Clark & Brother, to cover the notes given by Cobban to W. A. Clark & Brother's Bank, $10,063.30. November 17th, paid to R. M. Cobban on that draft—

Mr. MAYNARD.—Wait a minute. I hate to be constantly interrupting; if it can appear of record that all of this testimony of Mr. Wethey relative to the payment for this land may be subject to the objection already made.

Mr. BICKFORD.—Yes, that is all right.

Mr. WALSH.—That is agreed to.

Mr. BICKFORD.—This is only for the purpose of tabulating—

Mr. MAYNARD.—I don't care anything about this detail, but I mean the whole of it. Please let the records show that it is agreed between the counsel, for the purpose of saving the constant objection on the part of the Government representative, that he may have the benefit of an objection to all of this testimony given by Mr. Wethey relative to the facts and circumstances connected with the payment for these lands, the objection being that the said testimony is immaterial and irrelevant to any of the issues in this case, and entirely in-

(Testimony of A. H. Wethey.)

competent to sustain the allegations contained in defendant's answer, that he is or was a bona fide purchaser of these lands, and entirely incompetent to disprove the allegations contained in complainant's bill of complaint.

Mr. BICKFORD.—That is agreed to.

Q. Now, you may go on, Mr. Wethey, with those details at the point that you left off?

A. November 17th, paid R. M. Cobban on that draft, $27,682.95, and $2,000 in cash. November 25th, remitted to R. M. Cobban $1,792.50. On December 15th, 1899, I paid The First National Bank the sight draft drawn on us by R. M. Cobban for $24,230.95. These amounts with the interest complete, the total payment made for the two deeds dated November 11th and November 13th, 1899.

Q. Have you any more drafts there?

A. Yes, sir. These are in connection with the agreement made in January, 1900.

Q. Well, I will ask you to identify and give me the next draft which you have in your possession?

A. The next draft is dated February 12th, 1900, for $19,957.50, payable to the order of R. M. Cobban; that is the same amount as his note.

Mr. BICKFORD.—We offer this draft in evidence.

(Draft marked Defendant's Exhibit No. 298.)

Mr. BICKFORD.—I read now Defendant's Exhibit No. 298, as follows:

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 298.

No. 122473.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Feb. 12, 1900.

Pay to the order of R. M. Cobban $19,957.50 nineteen thousand nine hundred fifty-seven 50/100 dollars.

W. A. CLARK & BROTHER.

H.

To First National Bank, New York City.

The endorsements on the back of this instrument are as follows: "R. M. Cobban. Pay National Park Bank. New York City, or order First National Bank, Missoula Montana, John M. Keith, Cashier. Received payment through New York Clearing House Feb. 17, 1900. The National Bank of New York."

Q. Now, I will ask you to expain, Mr. Wethey, what transaction or deal the draft which we have just offered in evidence related to?

A. That draft was given in return for a promissory note of the same amount by Mr. Cobban in connection with an option for three months on certain timbers.

Q. That is the option that I read a few moments ago, and which you explained, is it?

A. That is the option which was made an exhibit here; I forget the exact number of it.

Q. What is the date of that option, if you know?

A. Some time in January.

Q. Wasn't it the option of January 27th?

A. The option is dated January 27th, 1900, and is

(Testimony of A. H. Wethey.)

marked Exhibit No. 289. That payment was on account of that. Then on April 30th, 1900, I paid to Mr. Cobban another draft of $13,305, which completed the option. We exercised the option and took the deed.

Q. You completed the purchase at that time, did you?

A. Yes, sir; and took the deeds; the deeds were dated January 9th, 1900, for $9,481.25 and the same date one for $18,850, and January 26th, $4,931,25. These two drafts I spoke of amount to the same as the amounts stated in those three deeds.

(Draft offered in evidence marked Defendant's Exhibit No. 299.)

Mr. BICKFORD.—I read Defendant's Exhibit No. 299 as follows:

Defendant's Exhibit No. 299.

No. 124926.

W. A. CLARK & BROTHER, Bankers.

Butte, Montana, Apr. 30, 1900.

Pay to the order of R. M. Cobban, $13,305, thirteen thousand three hundred five 00/100 dollars.

W. A. CLARK & BROTHER.

H.

To First National Bank, New York City.

The endorsements on the back of this instrument are as follows: "R. M. Cobban. Received payment through New York Clearing House May 4th, 1900, Seventh Nat'l Bank, of New York. Pay to the order of any Bank,

(Testimony of A. H. Wethey.)

Banker, or Trust Co. First Nat'l Bank of Butte, Montana, E. B. Weirick, Cashier, Endorsement correct, Seventh National Bank of New York."

Q. Now, I will ask you to state what this draft was, Mr. Wethey, and for what purpose it was given?

A. I have already explained that that draft completed the purchase of timber land as given in deed of 1900.

Q. That completed the transaction as far as the drafts were concerned?

A. Yes, those are all the drafts I have.

Q. I will ask you to state, Mr. Wethey, whether you have at any time received any letters or communications from me with reference to the first deeds that you testified to this morning?

A. I think you gave me a written opinion with reference to that.

Q. I will ask you to identify this letter, and ask you to state if that letter was received by you together with the accompanying communications with reference to the deeds which are dated July 29th 1899?

Mr. MAYNARD.—I interpose the same objection to this branch of the examination as to the matters of payment?

A. Yes, sir.

Mr. BICKFORD.—We offer in evidence now the letter which has been identified by the witness.

(Letter marked Defendant's Exhibit No. 300.)

Mr. MAYNARD.—I object to the reception in evi-

(Testimony of A. H. Wethey.)

dence of this letter, or those letters, for the reason that they are immaterial and irrelevant to any issue, and incompetent for any purpose as hereinbefore stated in the matter of the former general objection.

Mr. BICKFORD.—We will ask that the stenographer copy this letter into the record.

(Defendant's Exhibit No. 300 is as follows:)

Defendant's Exhibit No. 300.

WALTER M. BICKFORD,
Lawyer.
Rooms 10-11, Silver Bow Block,
Butte, Montana.

July 31, 1899.

A. H. Wethey. Esq., Butte, Montana.

My Dear Sir: I send you enclosed herewith copy of a letter which I have just written to Mr. McLaughlin with reference to the land examinations made by William Sparks. This letter has been written after a careful examination of the abstracts of title presented by Mr. Cobban, and after he has exhibited to me a deed conveying all of the land mentioned, and the letter has been written to guide Mr. McLaughlin in his payments of money for the land. The minor complications of payments of money to the various banks and individuals in whom title now rests will not give much trouble and the whole of the land can be transferred within a day on two.

(Testimony of A. H. Wethey.)

I will take up the communications received from Mr. F. A. Hyde either to-day or to-morrow, and will make you a written report on the same.

Yours very truly,

W. M. BICKFORD.

Dictated.

July 31st, 1899.

Hon. H. W. McLaughlin, Missoula, Montana.

My Dear Sir: Referring to your letter of July 23d, addressed to Mr. Wethey, and the memoranda attached thereto concerning the land upon the Blackfoot, I have to advise you with reference to the same as follows: I have examined the abstracts of title presented by Mr. Cobban.

1. South half of the south half, section 8, township 16, north, range 15 W. (Timber only.) With reference to the above tract of land it is to be observed that the patent has not yet been recorded, but that final receipt has been issued, and upon filing the certificate of the receiver of the land office, and the payment of taxes amounting to $30.55, and with a deed from Mr. Cobban to W. A. Clark, it would be safe to pay the amount of money due on the purchase of the land.

2. South half of the southwest quarter, west half of the southeast quarter, section 8, township 15, north range 14 W. Final receipt has been lost. Mr. Cobban holds the register's certificate of the issuance of the final receipt and this should be recorded, and an affidavit of the loss of final receipt should be delivered with

(Testimony of A. H. Wethey.)

the papers, and upon the execution of a deed and delivery of the same to W. A. Clark, payment may be made for the timber upon this land.

3. Southeast quarter of section 14, township 15, north, range 15 W. The title to the above tract is correct as shown by the abstracts and upon deed being executed and delivered by Mr. Cobban payment may be made.

4. Lot 2, and the southwest quarter of the northeast quarter, and west half of the southeast quarter, section 6, township 15 north, range 13 W. The abstract of title to the above land does not show a deed yet recorded to Mr. Cobban, but I am informed by Mr. Cobban that this deed has been executed, and is in the hands of the bank ready for delivery to him upon the payment of certain amounts of money due to the bank or to some other person, and upon delivery of this deed together with the deed from Mr. Cobban to Mr. Clark, the money may be paid for the land.

5. West half of the southwest quarter, west half of the northwest quarter, section 26, township 14 north, range 14 W. Investigation of the abstract of title shows that there is a mortgage given to Henry Hammond, and that the First National Bank of Missoula has commenced an action in attachment against the owner of the property and has attached the land above mentioned. An agreement was exhibited by Cobban showing that for the sum of $800.00 the First National Bank would undertake to release the Hammond mortgage, pay

(Testimony of A. H. Wethey.)

the costs of the attachment suit, and all taxes due up to the year 1899. Take a deed from Cobban, take deed from owner to Cobban, see that the money is paid to the First National Bank, and the balance due for this particular tract of land can then be paid to Mr. Cobban with safety. The above land is shown by the abstract to be owned by James Osborne.

6. Northeast quarter of the southwest quarter, southeast quarter of the northwest quarter, southwest quarter of the northeast quarter, northwest quarter of the southeast quarter, section 26, township 14, range 14 W. The abstract of title to the above-described land shows that the title is in one Labberty. Deeds have already been executed from Labberty to Hughes and from Hughes to Cobban, and these deeds are now in the Western Montana Bank ready for delivery upon the payment of sums of money due to the various parties mentioned. When these deeds have been delivered and the deed from Cobban has been signed, you would be safe in paying the amount due for this land.

7. North half of the northwest quarter, north half of the northeast quarter, section 32, township 13 north, range 15 W. The title to the above-described land is shown by the abstract of title to be in Alice M. Cobban and upon receipt of a deed from Alice M. Cobban payment can be made for the land described.

8. South half of the northeast quarter and the northeast quarter of the southeast quarter, section 32, township 13 north, range 15 W. The abstract of title shows

(Testimony of A. H. Wethey.)

that the land is owned by R. M. Cobban and upon a deed being executed therefor payment may be made.

9. Northwest quarter of the southwest quarter, section 32, township 13 north, range 15 W. Abstract of title shows that the same is owned by Mr. Cobban and that upon receipt of a deed from him payment may be made.

Generally speaking, it may be said that the deed which was exhibited to us by R. M. Cobban on Sunday was sufficient to cover the land mentioned above in all of the paragraphs numbered from 1 to 9, inclusive, and that nothing further need to be done except the recording of the deed from Cobban and wife with reference to the land mentioned in paragraphs 3, 7, 8, and 9, because the deed from R. M. Cobban and his wife, Alice M. Cobban, would convey to the grantee named therein full title to the land, but that care should be taken to see that all of the requirements mentioned above are complied with with reference to paragraphs 1, 2, 4, 5 and 6, and that when the directions with reference to the last named paragraphs are complied with, payment may then be made for the land described in said paragraphs.

Yours very truly,

_____

Dictated.

Q. You remember the letter you have just looked at?

A. Yes, sir.

Q. I will ask you to say if the contents of that letter indicate to you why it was that the first draft that you

(Testimony of A. H. Wethey.)

have mentioned were made payable to H. W. McLaughlin?

A. Why, the deal was closed up by Mr. McLaughlin in Missoula where Mr. Cobban resides.

Q. And that deed was not closed then at the time when Mr. Cobban and Mr. McLaughlin were here?

A. No, sir.

Q. It was closed subsequently and in the town of Missoula? A. Yes, sir.

Q. Why was the deal closed there instead of here?

A. The information that was required with reference to the land and which had to be submitted to our attorney was not ready at that time.

Q. I now hand you a letter under date of Sept. 18th, and ask you if that letter is one that you received in connection with this transaction.

Mr. MAYNARD.—The same objection to this letter and its reception in evidence as stated in the former objection.

A. This letter dated Sept. 18, 1899, addressed to A. H. Wethey, Butte, Montana, and signed by W. M. Bickford had reference to the deed previously testified to, dated Sept. 18th, 1899.

Mr. BICKFORD.—We offer this letter in evidence and ask that it be marked and that the same be copied into the record.

(Letter marked exhibit No. 301 for defendants, and is as follows:)

(Testimony of A. H. Wethey.)

Defendant's Exhibit No. 301.

WALTER M. BICKFORD,
Lawyer,
Rooms 10-11 Silver Bow Block,
Butte, Montana.

September 18th, 1899.

A. H. Wethey, Esq., Butte, Montana.

Dear Sir: I have made an examination of the abstracts of title to the various tracts of land submitted by R. M. Cobban as well as a deed executed by Cobban and wife to W. A. Clark, and find that the abstracts of title are correct with some few exceptions, and these exceptions are cases where the deeds are still left in the bank to be delivered to Cobban upon the payment of certain amounts of money before the delivery of the deeds. The land which has already been transferred is shown by the records to contain 10,475,000 feet of timber, and the deeds to lands which I have examined are shown to contain by the estimates 29,525,000 feet, making a total of 50,000,000 feet of timber on the lands conveyed.

Before paying the total amount to Mr. Cobban, I have asked Mr. McLaughlin to see that the amount due on the deeds now in bank are fully paid to the bank, and that the deeds from Cobban to Clark are delivered to him (McLaughlin) prior to the final payment being made. It seems that a part of this money at least must be paid to Mr. Cobban to enable him to obtain possession of the deeds now in the bank.

(Testimony of A. H. Wethey.)

The lands mentioned in the deeds from Cobban to Mr. Clark are described as follows:

The southeast quarter of the northeast quarter, the east half of the southeast quarter, the northwest quarter of the southeast quarter, and the southwest quarter of section 10, township 14 north, range 13 west; the east half of the southwest quarter and the west half of the southeast quarter of section 30 in township 15 north, of range 15 west, containing 160 acres, together with all water rights thereto belonging; the east half of the southeast quarter, east half of the northeast quarter of section 22 in township 15 north, of range 15 west, containing 160 acres, Missoula County, Montana; the west half of the northwest quarter of section 20 in township 16 north, of range 15 west, containing 80 acres; the northeast quarter of section 8, containing 160 acres, and the east half of the southeast quarter, the northwest quarter of the southeast quarter of section 6, containing 120 acres, all in township 14 north, range 16 west; the southeast quarter of section 10 in township 14 north, of range 16 west, containing 160 acres (the northwest quarter of section 8 in township 14 north, of range 16 west, containing 160 acres); the northeast quarter of section 28 in township 13 north, of range 16 west, 160; the northwest quarter of section 12 in township 13 north, of range 16 west, containing 160 acres; the east half of the southeast quarter, the southwest quarter of the southeast quarter and the southeast quarter of the southwest quarter of sec-

(Testimony of A. H. Wethey.)

tion 20 in township 13 north, of range 15 west, containing 160 acres; the east half of the northeast quarter, and the east half of the southeast quarter of section 30, in township 13 north, of range 15 west, 160; the southeast quarter of section 2 in township 13 north, of range 16 west, containing 160 acres; the south half of the southwest quarter, the northeast quarter of the southwest quarter, southwest quarter of the southeast quarter of section 2 in township 15 north, of range 15 west, containing 160 acres; the south half of the southwest quarter and the south half of the southeast quarter of section 26 in township 15 north, of range 15 west, 160; and the south half of the southwest quarter and the south half of the southeast quarter of section 14, township 15 north, of range 12 west, 160.

I would recommend that you send the balance of the $50,000.00 to Mr. McLaughlin asking him to pay the money to Cobban as he (Cobban) completes the title to the land and supplies the necessary information with reference to the completion of title in Mr. Clark. I have explained to Mr. McLaughlin fully the requirements with reference to this matter, and he can carry out the instructions with reference to the small quantity of land mentioned in the deeds now in the bank and with reference to the filing and recording of the deeds from Cobban to Clark, so that there may be no danger of mistake or overpayment, or payment prior to the perfecting of title in Mr. Clark.

(Testimony of A. H. Wethey.)

As this will complete the transaction with Mr. Cobban, it is essential that we should be sure that no over payment is made, and I have had this in mind in giving my instructions to Mr. McLaughlin.

I am assured by those who are best informed with reference to the purchases made in this section of the country, that the timber will over-run the estimates which have been made, and that there is no danger of our receiving less than we have paid for.

Yours very truly,

W. M. BICKFORD.

Dictated.

Q. I hand you a letter dated November 16th, and ask you to identify the same, and ask you if it was one that you received during the time of the transactions that you have testified to herein?

A. This letter is dated Helena, Montana, November 16th, 1899, addressed to A. H. Wethey, Butte, and signed W. M. Bickford. This letter has reference to the two deeds dated November 11th and November 13th, 1899, from Cobban to Clark.

Mr. BICKFORD.—We offer this letter in evidence.

(Letter marked Defendant's Exhibit No. 302 and is as follows:)

Defendant's Exhibit No. 302.

Helena, Mont., November 16th, 1899.

A. H. Wethy, Sec't, Butte, Montana.

Dear Sir: I send enclosed with this a list of timber lands which I have received from Mr. McLaughlin, em-

(Testimony of A. H. Wethey.)

bracing tracts of land in both Missoula and Deer Lodge Counties.

I have examined the abstracts of title to these lands, made comparisons with the list enclosed, and find that the lands herein mentioned have been conveyed to Mr. Cobban, and that Mr. Cobban and his wife have executed a proper deed of conveyance, conveying all of the lands herein described to Mr. W. A. Clark, with the exception of the two tracts of land which stand in the name of L. A. Wells and Lizzie Wells, and these tracts have been conveyed, as well as the rest; but there are certain mortgages which are apparently unsatisfied upon the tracts of land described, and payment for this land should not be made until such a time as Mr. Cobban satisfies you that the mortgages have been paid, and provides a satisfactory abstract of title.

I may say by way of explanation that the papers which he has show the title to the land to be in him, and the notes to secure which the mortgage was given being in his possession is prima facie evidence that the mortgage has been paid; but he has not yet had an abstract of title prepared, so as to cover this particular tract of land in the shape of an abstract of title.

I have no doubt the title is all right, but it is not in shape to pass upon.

Mr. Cobban also furnishes general certificates from the county clerk and recorder of Missoula County, and from the clerk of the court of the different districts showing that no judgments have been entered against

(Testimony of A. H. Wethey.)

him since the prior conveyance to Mr. Clark, and the general certificates may be taken as satisfactory concerning the whole tract of land described.

I shall hand this letter to Mr. Cobban to take to you, with the other papers, and trust that everything may be found satisfactory.

Very truly yours,

W. M. BICKFORD.

(Enc.)

Q. Mr. Wethey, what, if any, knowledge did you have from any source with reference to any agreement between any of these entrymen and Mr. Cobban or any of the entrymen of the land and anybody else with reference to the entry of this land and the conveyance thereof after the entry was made?

A. I didn't know there were any entrymen.

Q. You had no knowledge then of any agreement of any kind with any person with reference to this land?

A. No, sir; I supposed they were all homesteaders or something of that sort.

Q. You did not know even under what law of the United States the entries were being made?

A. No, sir.

Q. Was anything developed during the course of the negotiations between you and Mr. Cobban as to the manner in which the title of the land had been acquired?

A. No, sir; it never was discussed, and I never examined the abstracts.

(Testimony of A. H. Wethey.)

Q. Did you ever have any talk or conversation with Mr. Cobban at all with reference to his manner of acquiring these lands? A. No, sir.

Mr. WALSH.—Before completing the examination, in case something has been overlooked, we offer now in evidence all of the documents which have been identified by the witness and marked exhibits, and which have not heretofore been offered in evidence, and we also offer in evidence the letters identified by the witness and which have been marked as exhibits and which were read by counsel examining the witness, and as we understand, counsel for the Government agrees to this and stipulates, that the letters as the same were read by counsel, and as the same appear in the minutes of the stenographer may be considered in evidence, and that the originals may be withdrawn.

Mr. MAYNARD.—Yes, sir. Now, if your Honor please, I move to strike out all of the testimony which has been given on this hearing by the witness Wethey, for the reason that the entire testimony given by the witness is entirely irrelevant and immaterial to each and every issue presented by the pleadings in this case, and particularly because the same is entirely incompetent to sustain any averments contained in defendant's answer relative to his being a bona fide purchaser for these lands, and incompetent for the purpose of disproving any of the allegations contained in the complainant's bill of complaint.

(Testimony of A. H. Wethey.)

Cross-examination.

(By Mr. MAYNARD.)

Q. How long did you say, Mr. Wethey, that you have been connected with the defendant in a business way?

A. Since December, 1887.

Q. And your home and business has been continually here in the city of Butte? A. Yes, sir.

Q. That is a period of—

A. Over 14 years.

Q. And just what is the general scope of your employment?

A. I have general charge of Senator Clark's enterprises in Montana outside of the bank; I have nothing to do with the bank here.

Q. Just what do you mean by that?

A. Well, he is interested in mining and smelting here in Butte and I have charge of those things. He has his lumber industry in Missoula County, which comes under my care. Also the coal business in the eastern part of Montana and all kinds of things.

Q. You do not mean to say, do you, that the Senator does not on his own responsibility and without consulting you engage in various kinds of business here in Montana?

A. Oh, yes, he engages in various kinds of business, and then turns them over to me to look after.

Q. Then do you wish to be understood that as saying that during these 13 years that you have been connected with Senator Clark that he has not originated

(Testimony of A. H. Wethey.)

and carried through to an end business without your having anything to do with it?

A. He has originated a great many things, but he is away from Butte a great deal and I am his representative here, and I think I have had something to do with every enterprise he has carried on here in Montana.

Q. That is, some parts of the details of the business you have had something to do with?

A. Yes, sir.

Q. But there were some of the details of a particular business that you might not become acquainted with?

A. Well, each business has its owa superintendent and manager, and they come to me or if they are out of town they write to me, so that I keep in close touch with everything that is going on, and keep the Senator advised of anything that seems necessary.

Q. How long have you personally been acquainted with Mr. R. M. Cobban?

A. I knew him here in Butte before he went down to Missoula, I think; I must have known him probably 10 or 12 years.

Q. When did he leave Butte to go to Missoula?

A. Why, I don't remember, some years ago; probably in 1898 or 1897, or it may have been in 1899; I did not have any occasion to keep track of his movements.

Q Then you have known him for 10 years, say, previous to his going to Missoula?

A. Well if he went to Missoula in 1896, I did not, because I came here in 1887.

(Testimony of A. H. Wethey.)

Q. How long after your coming here was it before you became acquainted with Mr. Cobban?

A. Oh, I don't think I knew him for the first two or three years that I was here.

Q. What business was Mr. Cobban engaged in here?

A. Real estate.

Q. Did you have any business dealings with him?

A. Quite frequently.

Q. Previous to his going to Missoula?

A. Yes, sir.

Q. Quite frequently? A. Yes, sir.

Q. Now, when I refer to you, I mean as the representative of the defendant. A. Yes, sir.

Q. Did you have any individual deals of your own?

A. No, sir.

Q. How many different kinds of real estate deals had you had with Mr. Cobban previous to the one now under examination?

A. Well, Mr. Cobban was a partner of Senator Clark's in what is called the Clark Addition of Butte and the Valley Addition, and Mr. Cobban had charge of the work in connection with that, and used to pay the taxes and look after the details, and he would come around to me every now and then with a statement showing what taxes had been paid and what expenses had been incurred, and I would pay him Mr. Clark's proportion.

Q. Who were the members of that partnership besides the defendant and Mr. Cobban, if anyone?

(Testimony of A. H. Wethey.)

A. A great many people; I do not remember all of their names.

Q. Was it a copartnership?

A. Well, I don't know whether it was or not.

Q. You say it was a partnership; did you mean that?

A. Well, in this way, that they owned undivided interests in the same tracts of ground.

Mr. WALSH.—That is what is called a cotenancy in this country.

The WITNESS.—They were co-owners or cotenants.

Q. How many were there?

A. Well, some of the interests were divided up into sixteenths and I cannot remember all the names. I think Mr. Cobban only owned one or two-sixteenths or something like that. Mr. Clark owned one-quarter.

Q. And Mr. Cobban owned two-sixteenths, you say?

A. I say one or two-sixteenths; it may have been more or less.

Q. Was he an active man in charge of the business?

A. He was right in the real estate business, Mr. Cobban was and it was just in his line to look after it.

Q. Did you have any personal investment in this partnership? A. No, sir.

Q. But Mr. Clark and Mr. Cobban did?

A. Yes, sir.

Q. Are you sure that here were not a number of conversations and arrangements and agreements and contracts made between these partners that you, and outsides, did not know of?

(Testimony of A. H. Wethey.)

A. Whenever any agreement was made, I think it came through me to the Senator.

Q. Now, when you say that, Mr. Wethey, all that you mean by that is that in the general course of your business, the defendant was accustomed to turn over to you the details of his different business engagements?

A. Yes, sir.

Q. That is all you mean?

A. Yes, sir. He did not have time to attend to those things personally, and if Mr. Cobban wanted to have a street graded or anything of that sort he would come and talk to me about it and I would ask the Senator, or write him and ask him whether he wanted or whether he approved of such a work.

Q. Yes, but the agreement which had been made between Mr. Cobban and Mr. Clark relative to these streets, the details of which were afterwards submitted to you, you might not have been informed about, is not that true?

A. Well, that is not very likely.

Q. Are you prepared to swear that there was not a great many agreements and arrangements made and entered into between Mr. Cobban and Mr. Clark when they were partners together and you were not a partner and had no interest in the matter at all except as an employee of the defendant, that you did not know of, are you?

A. I would say that there were no agreements ex-

(Testimony of A. H. Wethey.)

cept what I knew of, and that they were made through me as representing the defendant.

Q. How long did this partnership last?

A. It is still in force, I guess.

Q. Is Mr. Cobban still interested?

A. I think Mr. Cobban still owns an interest in the addition down there, in the real estate, and Mr. Clark still owns an interest in the mineral title. The ground was platted, and Mr. Clark sold his interest in the lots.

Mr. BICKFORD.—You mean by that the surface of the ground, don't you?

The WITNESS.—Yes, except such part of the surface as is reserved for mining purposes.

(By Mr. MAYNARD.)

Q. Well, this was in addition to the city of Butte, was it? A. Yes, sir.

Q. How many of them, how many additions?

A. Well, the Clark Addition, the Valley Addition and the Ophir Addition, that is wrong; that should be Carte Blanche instead of the Ophir.

Q. In addition to this continuing partnership between the defendant and Cobban as you have now specified, are there any other business deals that you know of? A. No, sir.

Q. Now existing? A. No, sir.

Q. Do you know that any of them did exist at any time within the range of your acquaintance with Mr. Cobban?

(Testimony of A. H. Wethey.)

A. No, sir; except such agreements as I have testified to here already in my direct examination.

Q. Certainly, I mean excluding the business relations that are now under investigation.

A. Yes, sir; there was no other arrangement at all between them of any kind.

Q. When did this partnership commence?

A. What partnership?

Q. The one that you have referred to between Cobban and the defendant?

A. I do not know. The ground was patented in 1881, and I think Mr. Clark has always had an interest in it; whether Mr. Cobban has or not I do not know. I never examined the abstract of title.

Q. Do you know the purpose for which Mr. Cobban left Butte and went to Missoula?

A. For his health, I guess; it is a beautiful country down there; they have trees and lawns and all that sort of thing. Here we do not enjoy those privileges.

Q. Is this answer to my inquiry intended to be facetious or intended to be the truth, which?

A. I think it is the truth; I remember his speaking about not enjoying good health here in Butte, and his family not having very good health, and that was one reason why he went to Missoula.

Q. Do you know when that was?

A. Well, not any nearer than I have already stated.

Q. Isn't there any way that you can definitely fix the time when Mr. Cobban left Butte and went to Missoula?

(Testimony of A. H. Wethey.)

A. The only way I know of would be to ask him.

Q. Very well, ask him.

The WITNESS.—Mr. Cobban, when did you move to Missoula?

Mr. COBBAN.—The last time was in 1898, I think; I have resided there two different times.

The WITNESS.—Well, that was about the time that I thought.

By Mr. MAYNARD.—What part of the year, 1898?

Mr. COBBAN.—I think it was in October.

(By Mr. MAYNARD.)

Q. Now, Mr. Wethey, you don't know of any other purpose that Mr. Cobban removed from Butte, October, 1898, and went down to Missoula to live except for his health?

A. No, I don't know of any other reason that he went there.

Q. It was not but a few months thereafter before the negotiations relative to the taking up of these lands in this controversy, commenced, was it?

A. I think they commenced about June or July, 1899; that was simply a coincidence; I suppose Mr. Cobban—

Q. We will find out whether it was a coincidence or not later. Now then, will you be kind enough to tell me, Mr. Wethey, when your attention was first called to this transaction now under investigation?

A. About the 1st of July, 1899, I should say; the latter part of June or the first of July, 1899.

(Testimony of A. H. Wethey.)

Q. Do you remember the circumstance?

A. I remember that the Western Lumber Company was operating on the Nine Mile, and that we were buying timber on the Nine Mile, and that the Big Blackfoot Milling Company were also buying timber on the Nine Mile, and Mr. McLaughlin came to me and he said that he wished the Blackfoot people would leave him alone, and if we could buy timber on the Big Blackfoot where they were operating, perhaps they would stop buying timber on the Nine Mile?

Q. Was that the first conversation that you had ever had with anyone in regard to this matter?

A. That is the first man I ever spoke to about it, was McLaughlin. He brought the matter to my attention. You see, he was the manager of the Western Lumber Company and I was the vice-president, and he was securing timber on the river called the Nine Mile in Missoula County.

Q. And that was for what purpose?

A. That was for the purpose of operating a sawmill.

Q. That is to saw timber? A. Yes, sir.

Q. And you were buying timber to run your sawmill?

A. Yes, sir; and at the same time the Big Blackfoot Company had a lot of timber cruisers out, I suppose, and they were securing a great deal of timber upon the same stream, and he was afraid we would have some difficulty with them. The stream is not very large, and it would be difficult for both companies to be driving logs down the stream at the same time and keep

(Testimony of A. H. Wethey.)

them separate, and he thought, as a matter of policy, it would be a good plan for us to secure timber on the Big Blackfoot so that if they caused trouble on the Nine Mile we could retaliate on the Big Blackfoot, and that was his advice.

Q. The logs of the Big Blackfoot Company and your logs would be properly marked, wouldn't they, before they were put in the stream?

A. I suppose they would, but they would get mixed up, you know.

Q. Isn't that common in every State where pine trees grow to have perhaps a dozen different owners send their logs down stream together and then have them sorted out later?

A. It gives more or less work, doesn't it?

Q. Of course, it gives more or less work.

A. If that can be avoided, so much the better.

Q. By one man coming in and buying all the timber?

A. Yes, sir.

Q. Now, then, you speak of the Big Blackfoot Company. Who was the principal owner of the Big Blackfoot Company at that time?

A. The Amalgamated Copper Company.

Q. And who was the principal stockholder of the Amalgamated Copper Company at that time?

A. I never saw a list of their stockholders.

Q. Don't you know that it was Mr. Marcus Daly that was the principal stockholder of the Big Blackfoot Company at that time?

(Testimony of A. H. Wethey.)

A. I don't think he was the principal stockholder; he might have been the largest individual stockholder.

Q. That is what I am talking about.

A. Well, I don't think he was, but he might be.

Q. And the defendant in this case held the majority of the stock of the Western Lumber Company?

A. Yes, sir.

Q. Now, wasn't it the real truth of the matter that it was not the difficulty in making a division of the marked logs which caused you to accept Mr. McLaughlin's advice, but that it was the fight that was then being waged between the defendant and Mr. Marcus Daly?

A. I don't think so. I don't know whether Mr. Daly knew much about it.

Q. It don't make any difference whether he knew anything about it; it was property that was involved in the matter?

A. Not his property; he only had a small percentage in it.

Q. In the same way it was not the defendant's property in the Western Lumber Company, but he was still, you say, the majority owner of the stock?

A. Yes, sir, I testified that Mr. Clark owned a controlling interest in the Western Lumber Company.

Q. Wasn't it true that Marcus Daly at that time was the largest individual owner of the Blackfoot Company?

A. I do not know that he was.

Q. You won't say but what he was, will you?

A I doubt it very much.

(Testimony of A. H. Wethey.)

Q. Who do you think it was?

A. Well, it would be pretty hard to say; it might be Rothschild or it might be Rockefeller.

Q. Well, there was a contest being waged at that time, wasn't there, between the defendant and Mr. Daly?

A. I never have had anything to do with politics; I had too many other things to think of.

Q. Well, that is a part of your education that has been sadly neglected? A. Yes, sir:

Q. But as a citizen, and as closely identified with Mr. Clark, as you swear you have been all this time, did you not know that fact? A. What fact?

Q. That there was a contest and rivalry of a business and political character being waged at that time between the defendant in this case and Mr. Daly?

Mr. BICKFORD.—We object to that as not proper cross-examination; it relates to nothing that was brought out in the examination in chief.

A. Of course, it is generally reputed and reported in the papers that there was.

Q. And that is as direct an answer as you care to make under oath to my question?

A. I don't know the details of the trouble.

Q. Where was Mr. McLaughlin when he called your attention to this matter?

A. He came to my office in Butte.

Q. When was that?

(Testimony of A. H. Wethey.)

A. The latter part of June, I think.

Q. You are able to fix that time?

A. Well, I think the deeds and the letters that I have introduced here are sufficient to enable me to fix it at about that time.

Q. Have you any direct personal recollection of the time when Mr. McLaughlin first called your attention to this matter, outside of the deeds and other papers which you have offered in evidence in this case?

A. Only in a general way. Of course, these papers enable me to fix more closely the date, the time.

Q. You won't say but what it was as far back as March of the year 1899, will you? A. Yes, sir.

Q. That Mr. McLaughlin came to Butte to see the Senator?

A I would be willing to make an affidavit that I did not know anything about it in March, 1899.

Q. Would you be willing to make an affidavit that Senator Clark did not know anything about it at that time?

A. Yes, sir, to the best of my knowledge and belief.

Q. That kind of affidavits are very, very common in Butte, you know—

The EXAMINER.—You must put questions to the witness.

Mr. BICKFORD.—We have a witness here who desires to leave and if the other side will consent we would like to withdraw the Mr. Wethey for the present.

(Testimony of A. H. Wethey.)

Mr. MAYNARD.—Certainly.

The witness, Wethey, excused until Tuesday morning, at 10 o'clock

Monday, April 28th, 1902, ten o'clock, A. M.

Hearing resumed pursuant to adjournment.

A. H. WETHEY, recalled for cross-examination.

(By Mr. MAYNARD.)

Q The sole purpose, Mr. Wethey, as you understand that, the first land that was bought from Cobban, was a retaliatory measure against the Blackfoot Milling Company.

By Mr. BICKFORD.—We object to that for the reason that the witness has not stated that it was a retaliatory measure, but did say, on the contrary, that it was a precautionary measure.

Q. Well, we will change that; we will substitute the word "precautionary" for the word "retaliatory."

A. It was intended to safeguard our interests there.

Q. As you have stated in your previous examination?

A. Is that a question?

Q. Yes, sir, that is a question.

A. Yes, that was the intention, simply to protect our interests, with a view of possibly making an exchange with the Blackfoot Milling Company, because they were out of their territory, and we wanted to keep them into their own territory and out of ours, so that we went in

(Testimony of A. H. Wethey.)

there with the expectation that at some later date we could make an exchange.

Q. And the amount of timber that was deemed sufficient was forty million feet?

A. That was the first idea of it, but it seemed that after that the Blackfoot people kept on acquiring more and more timber in Nine Mile, and as they increased their holdings there, we judged that it was better to increase our holdings in the Blackfoot country.

Q. For the same purpose?

A. Yes, sir, with the same purpose; with a view to making some fair exchange later on?

Q. What did you say?

A. With a view to making some fair exchange later on.

Q. And that, from the beginning to the end, was the sole purpose for which the defendant purchased all of the lands that he did buy from Cobban?

A. Yes, sir.

Q. The first payment that was made in pursuance of this plan was along the latter part of July, was it?

A. Yes, sir, in 1899.

Q. And that was a cash payment for the lands named in exhibits Nos. 277 and 279?

A. I would like to see those exhibits.

Q. Well, I wish you would have your papers and everything convenient, Mr. Wethey, so that you can refer to them.

A. The exhibits are in the Court here.

(Testimony of A. H. Wethey.)

By the EXAMINER.—Here are the exhibits Nos. 277 and 279.

Q. Well, are they both there?

A. Yes, sir, one of them covers land in Deer Lodge County, and the other covers lands in Missoula County.

Q. They are in 277 and 279?

A. No. 276 and 277.

Q. Oh, I thought there was some reason for it; I thought there was a skip in the numbers somewhere.

A. These exhibits are 276 and 277.

Q. These were the first exhibits?

A. Yes, sir, I gave Mr. McLaughlin the money for that to pay Mr. Cobban for the land.

Q. And the consideration was $5,437.50 and $7,756.25?

A. No, I think that is wrong. Let me see. Yes, that is right. The total amount is $13,093.75.

Q. Now, then, this was paid by you in cash to Mr. McLaughlin?

A. Yes, sir, and then Mr. McLaughlin, he paid it to Cobban. I have here McLaughlin's checks covering the same, payable to Cobban's order. Yes, three checks—

Q. Are those in evidence.

By Mr. BICKFORD.—No, they are not in evidence:

By the WITNESS.—Were those offered in evidence?

By Mr. BICKFORD.—No, they are not in evidence.

Q. Are these the ones? (Mr. Maynard holds up papers.)

(Testimony of A. H. Wethey.)

A. No, sir. Those three checks from McLaughlin to Cobban cover the amount that was paid to McLaughlin for Cobban's benefit. I got these from the archives of the Western Lumber Company since I was examined in chief. You will find they are all made payable to Cobban's order and indorsed by him.

By Mr. MAYNARD.—Do you desire to have these introduced in evidence?

By Mr. BICKFORD.—Why, do just as you please about that matter. Perhaps they had better be held and we will introduce them later.

By Mr. MAYNARD.—You would like to have them introduced in evidence?

By the WITNESS.—Yes, you might as well put them in to save time.

By Mr. BICKFORD.—Well, we will let them go for the present until we come to the redirect examination; I will introduce them in evidence then.

Q. These three checks—

By the EXAMINER.—They will be marked exhibits No. 305, 306 and 307.

By Mr. BICKFORD.—They are not introduced in evidence yet.

By the EXAMINER.—No, but I will mark them for identification.

By Mr. BICKFORD.—Oh, all right.

By the EXAMINER.—The check dated July 28th,

(Testimony of A. H. Wethey.)

1899, is marked exhibit No. 305. The check dated July 29th, 1899, is exhibit No. 306, and the check dated July 31st, 1899, exhibit No. 307.

Q. These three checks aggregate the sum of thirteen thousand dollars, don't they?

A Thirteen thousand and ninety-three dollars and seventy-five cents.

Q. And that paid for the lands that you bought from Mr. Cobban?

A. And described in exhibits No. 276 and 277?

Q. Yes, sir. A. Yes, sir

Q Well, now, then, Mr. Cobban had been here in Butte just a day or two before this, had he not?

A I think so; I think he was in Butte—

Q. And that was the first time you ever had any talk with him in regard to the purchase of these lands?

A. I think prior to his visits in the latter part of July, in connection with that transaction that my previous conversation had been with Mr. McLaughlin. It is possible that at the meeting that was held sometime before, when Mr. Cobban came to Butte and discussed with Mr. Bickford and Mr. McLaughlin and Senator Clark in Mr. Clark's private office, and I was called in and told there was to be some transactions of this character, that that was the first intimation—the first time, then, probably that I talked with Mr. Cobban about it.

Q. Where did Mr. McLaughlin get this money?

A. I gave it to him at the bank in Butte; it was drawn on W. A. Clark's private account.

(Testimony of A. H. Wethey.)

Q. For the purpose of depositing the same in the First National Bank in Missoula?

A. Yes, sir. He subsequently drew—

Q. What did you say, Mr. Wethey?

A. He deposited the money in the First National Bank of Missoula, and then drew on it to pay Mr. Cobban. He paid Cobban for the lands as he turned in the titles.

Q. Did you understand that he then opened an account in the First National Bank of Missoula?

A. Oh, he had had an account for a long time before that with the First National Bank of Missoula.

Q. And this money was given to him by you and deposited in the bank to the credit of his account?

A. Yes, sir.

Q. Well, now, you had done this before, had you not?

A. No, this was the first transaction of this kind.

Q. That is with Cobban? A. Yes, sir.

Q. But you had frequently given him money for other purposes?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and it is entirely irrelevant and immaterial to the issues in this case; the witness having stated that this was the first transaction with reference to this matter.

A. Do you wish me to answer the question?

By Mr. BICKFORD.—Why, you needn't answer, if it

(Testimony of A. H. Wethey.)

is concerning any other transaction than the transactions mentioned in the bill of complaint in this case.

By the WITNESS.—I don't see any objection to answering it so far as the facts are concerned.

By Mr. BICKFORD.—I don't see any objection to answering the question either, except that it is going into immaterial matters and matters that have no connection whatever with the case.

A. Mr. McLaughlin was the general manager of the Western Lumber Company, and we had made payments to him on that account. We paid the capital stock into his hands for the purpose of running a sawmill, and for the purpose of covering the necessary monthly expenses and that sort of thing, and we paid him money to pay on the purchase of these lands.

Q. Very well. But as a matter of fact previous to this time you had large amounts of money, at times on deposit in the First National Bank of Missoula, Montana, which was in the name of Mr. McLaughlin, but which really belonged to the defendant in this case?

By Mr. BICKFORD.—We object to that for the reason it is not proper cross-examination, and because the witness—because the question presupposes that the witness has heretofore answered that the defendant in this case had a large amount of money on deposit in the First Montana National Bank, and for the further reason that the question is not proper cross-examination

(Testimony of A. H. Wethey.)

because it is not concerning anything brought out in the examination in chief.

By the EXAMINER.—You may answer the question, Mr. Wethey.

A. It belonged to the corporation known as the Western Lumber Company.

Q. Well, now, then, why didn't you send this money directly to Mr. Cobban?

A. Because he hadn't carried out in full the terms that Mr. Bickford required. I believe already that evidence has been introduced relative to some instructions by Mr. Bickford to Mr. McLaughlin concerning titles to the land in question, that the titles were to be guaranteed before the accounts were settled, or something of that sort, before the money was actually paid over to Mr. Cobban. I cannot remember the exact details of those transactions, but Mr. McLaughlin turned the money over to Mr. Cobban as Mr. Cobban turned in the deeds there free from any incumbrances. There was some question of mortgages or something of that kind, to be settled, as I remember it.

Q. Do I understand you, then, that you claim that there was something yet to be done by Mr. Cobban before the money could be paid over?

A. Yes, I believe there was something in the nature of mortgages, or that sort of thing, that was to be released on some of the tracts of land that he was deeding to us. I don't remember the exact details, but I be-

(Testimony of A. H. Wethey.)

lieve those details have all been covered by the evidence of Judge Bickford, with reference to those lands, I believe that those matters concerning the loans, are all in evidence.

Q. Well, do you understand that Mr. McLaughlin was to be the judge of the performance of the conditions?

A. I think he had written instructions from Mr. Bickford. I think Mr. Bickford told him that when a certain mortgage was paid and satisfied, that it would be safe for him to pay Cobban for that particular tract of land, and so on. I think that was the nature of the instructions.

Q. And so, when you sent this money to Mr. McLaughlin, you did it with the knowledge on your part that whatever conditions were yet to be fulfilled, it was without any further consultation with yourself or the defendant?

A. McLaughlin was to complete the title.

Q. Under instructions which he had received from Mr. Bickford? A. Yes, sir.

Q. How many thousand or million feet of pine did this money purchase?

A. Ten million four hundred and seventy-five thousand feet. It was at the rate of a dollar and twenty-five cents a thousand.

Q. Ten million?

A. Ten million, four hundred and seventy-five thousand feet.

(Testimony of A. H. Wethey.)

Q. Well, now, then, there was thirty million more feet to be sold by Mr. Cobban, was there?

A. Yes, I paid McLaughlin in September the money for that; that second transaction in September covered twenty-nine million, five hundred and twenty-five thousand feet.

Q. What did you say?

A. The second transaction covered twenty-nine million five hundred and twenty-five thousand feet.

Q. And the other was ten million four hundred and seventy-five thousand feet?

A. Ten million, four hundred and seventy-five thousand feet. The two amounts make forty million feet.

Q. How much was paid, did you say?

A. On September 13th, I paid McLaughlin five thousand dollars, and on September 19th, I paid him thirty-one thousand nine hundred and six dollars and thirty-five cents. That transaction was handled in the same way as the previous one. He took my money—the money that I paid him, and deposited it to his credit in the First National Bank in Missoula, and paid it to Cobban in three different checks.

Q. In three different checks?

A. Yes, sir. Shall I give you the information about those checks?

Q. If you please?

A. On September 13th, 1899, he paid R. M. Cobban four thousand dollars; on September 21st, he paid him twenty thousand dollars, and then on the same day he

(Testimony of A. H. Wethey.)

paid him by a separate check, $12,906.25. These three checks, together, amount to $36,906.25. The amount was the same as the two checks that I had given to Mr. McLaughlin. Do you wish to mark those checks as exhibits?

By the EXAMINER.—They have been marked, have they not?

By Mr. BICKFORD.—No, they have not; there are three of them.

By the WITNESS.—Yes, there are three different checks.

By the EXAMINER.—They are marked respectively, No. 308, 309 and 310.

Q. The money that Mr. McLaughlin gave in payment of these checks, was sent to him by you?

A. Yes, sir.

Q. In two checks?

A. Yes, sir, in two checks.

Q. Where are those checks?

A. I don't know where those checks are.

Q. What did you say?

A. I don't know where the original checks are that I paid to Mr. McLaughlin.

Q. Where are the stubs?

A. They are in my office.

Q. You have them now?

A. Yes, sir, I did have them. I had them down here at the courtroom.

(Testimony of A. M. Wethey.)

By Mr. BICKFORD.—We concluded that the original drafts that were presented here would be equivalent or better than the stubs of the checks, and those drafts have been put in evidence already.

A. The New York drafts that I gave you before, and these checks from McLaughlin to Cobban, cover those transactions. I thought you wanted the original papers as far as possible.

Q. Let me understand you. You bought New York drafts, did you, Mr. Wethey?

A. Yes, sir, and those New York drafts are here in evidence.

Q. Well, why did you buy New York drafts instead of sending him checks?

A. We avoided paying currency that way. The banks at Missoula accept New York drafts at par, and it saved us the expense of shipping currency.

Q. Now, let me understand you. You bought these drafts with your own checks, did you?

A. Yes, sir.

Q. And you say that you have the stubs of those checks? A. Yes, sir.

Q. But that you haven't got the original checks?

A. No, sir.

Q. Can you give me a reason why you haven't got them?

A. I never got any of the checks I drew and sent through Mr. Clark's private account. I don't know what becomes of them, but I believe they go to New

(Testimony of A. H. Wethey.)

York, and he has an office there where the accountants enter the checks up on his books. Every check that I ever gave on his account I put on it the details for which it is issued, so that—whatever checks they get they will afterwards know from the check itself, the purpose for which it is issued, and know what account to charge it to.

Q. These checks that you are speaking about, and from which your entries are made, are in the city of New York?

A. I don't know; they may be destroyed by this time.

Q. But you have the stubs in your original check-book, haven't you?

A. Yes, sir, I brought them all down here for the purpose of looking them over whenever necessary.

Q. Will you produce those checks this afternoon?

A. Yes, sir.

By Mr. BICKFORD.—We shall object to his producing them this afternoon, for the reason that it is only the stubs of the checks and not the checks themselves, and the original papers have been introduced in evidence and marked as exhibits in the case, namely, the drafts which we gave in place of the checks, and the drafts themselves are the best evidence of the fact, and are proper to be introduced rather than the stubs which are called for by counsel.

Q. Now, was that—were the amounts equaled?

A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. You said something about—you said something a moment ago in regard to some other amounts?

A. I said that these three checks that McLaughlin gave to Cobban in December, were the equivalent of two checks that I gave McLaughlin.

Q. And you said something else in addition, didn't you?

A. Well, what did you refer to?

Q. Well, that there were some other elements that entered into it, and you specified them?

A. Well, let the stenographer read the question. That is all there is to it.

Q. In regard to what checks and other items put together, equalizes the amount of the drafts which the witness sent to Mr. McLaughlin?

A. I have given that already.

Q. Well, then, how much was the amount of these two drafts?

A. The amount of the two drafts that I sent to McLaughlin?

Q. Yes, sir.

A. One was for $31,906.25, and the other was for $5,000.00.

Q. And that equalizes the amount named in these three checks? A. Yes, sir.

Q. Now, that was a completed transaction when this money was paid to Cobban, was it not?

A. Yes, sir, that covered the two drafts marked exhibits 278 and 279.

(Testimony of A. H. Wethey.)

Q. You had, then, purchased your necessary forty million feet of lumber? A. Yes, sir.

Q. And the deal between you and Cobban was concluded? A. Yes, sir.

Q. Well, now, as a matter of fact you didn't stop there but you purchased nearly two hundred million feet altogether?

A. We stopped there—

By Mr. BICKFORD.—We interpose the objection now that it is not proper cross-examination, and is concerning facts which were not brought out in the examination in chief, and is supposing the answer of the witness concerning a fact which he has not heretofore testified to, namely, that two hundred million feet of timber was purchased.

A. We did stop there, and neither the Senator nor myself expected to buy any more, and we didn't know that Cobban had any more for sale, and it was only later when he came along again and said he had some more, that he made the proposition to give the Senator an option on an additional number of feet that he had secured. He was doing that without our knowledge, and without his revealing to us at all what he was doing. We had no arrangement with him of any kind. We did not know that he was going on and securing timber.

By Mr. BICKFORD.—Wasn't that true with reference to all of it?

A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. How long after the date of this check marked Exhibit No. 310, dated September 21st, 1899, when you supposed that all negotiations between yourself—now, I want you to understand when I refer to "you," I refer to the defendant, as if you were Senator Clark—

A. Yes, sir.

Q. —had ended; did you take up new deals with Mr. Cobban?

A. In the early part of November, yes, sir.

Q. In the early part of November?

A. Yes, sir.

Q. So that between the 21st of September and the early part of November, no negotiations had been had between Cobban and yourself?

A. I paid money to McLaughlin for Cobban on the 19th day of September, and no negotiations were made with Cobban after that date, until the early part of November, when he came to me—

Q. Well, and you hadn't seen him or had any talk with him in regard to his acquiring any more land?

A. I don't believe I had.

Q. Well, now, Senator Clark, the defendant, was in town during the spring and the early part of the summer of 1899, was he not? A. I think so.

Q. Did he continue to remain in town during the early fall? A. I am not sure.

Q. Did you know of his being here for any length of time during that fall?

(Testimony of A. H. Wethey.)

A. I think he went away in the fall, but I don't know just what time he went.

Q. Or where he went to?

A. Either New York or Washington, I think.

Q. Do you know how long he was away?

A. No, sir, I do not; I don't remember.

Q. Are you able to say that he wasn't in town during this fall?

A. During the months of September and October?

Q. Yes, and November, 1899?

A. I am not able to state positively whether he was or was not; I think he might have been.

Q. Have you any data here by which you could ascertain that fact?

A. I might be; I might be able to ascertain it; I am not sure whether I could or not. Several of Mr. Clark's letters are in evidence here as exhibits, and those would show where he was.

Q. All that you desire to be understood as swearing to, is the fact that you yourself, between the 19th day of September, 1899, and the early days of November, had no agreement with Mr. Cobban.

A. Well, I knew a little more than that, because when Mr. Cobban came in to see me in the early part of November, about this new lot of land that he had bought, he did not submit it to the Senator, and he didn't see the Senator himself.

Q. So you are very certain that the first knowledge

(Testimony of A. H. Wethey.)

that Senator Clark had as to the acquisition of more land by Cobban, was your stating that fact to him.

A. Yes, sir; I am quite sure of that.

Q. Did you state that to him orally or in writing?

A. In writing.

Q. All the dealings on this subject with the defendant were in writing, were they?

A. I think so, when he was in town. I would often leave memorandums on his desk on blank pieces of paper. I would leave memorandums on his desk in writing on sheets of paper, which would be torn up and thrown away when he acted on them.

Q. And all of your letters addressed to the defendant on this entire subject were destroyed?

A. I know that only by asking our stenographers to get me my letters to the Senator out of his files, and they said that they never could be found; that they never kept my letters but always tore them up.

Q. Who tore them up?

A. The stenographers.

Q. Was that on their own motion or by the orders of the defendant?

A. Why, I think it was their own motion. They said they took up so much room in the files.

Q. But the answers of the defendant to your letters?

A. I kept them.

Q. They were preserved?

A. They came into my files and I kept them for my own use, because they were my instructions.

(Testimony of A. H. Wethey.)

Q. And you have kept all of them?

A. I believe so; I don't know of any which I have destroyed, at least.

Q. Have you no way of refreshing your recollection as to the proposition submitted to him by you, in regard to these matters, from my writings or memorandums in your possession, other than the letters which you received from the defendant?

A. I have no original writings of mine that I can find.

Q. Well, what have you got?

A. I have some impression copies.

Q. Are you in the habit, in the course of your business, of making impression copies of all the letters that you send to the defendant?

A. No; but most of them, especially when he is away.

Q. Well, I mean when he is here.

A. When he was here, frequently I would write him without keeping the letters, notes and things of that sort.

Q. On small and immaterial things?

A. Yes, often about such a thing as this I may have done so.

Q. Now, do you know, Mr. Wethey, whether or not at the time that these negotiations were carried on of making in the due course of your business, copies of these letters that you sent to the Senator, and haven't you got them now? A. I have got the impression copies.

Q. Well, why did you state when you were on the stand before, and why have you just stated, that the letters were destroyed?

(Testimony of A. H. Wethey.)

A. That is the fact, that my original letters were destroyed.

Q. Well, did you not seek to create the impression that there was no evidence of what you had written to the Senator in existence?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and is badgering the witness, and is misconstruing the testimony which he had heretofore given with reference to this subject, he never having been interrogated with reference to impression copies which had been made by him in his copy-book, and no question having been asked the witness with reference to these copy books at all.

A. No, sir.

Q. Why did you voluntarily, when I asked for the—asked you in reference to the fact as to whether your letters—your side of the correspondence was in existence at the time, tell me when you did, that the original letters were destroyed, when you did have an original impression copy of the same?

By Mr. BICKFORD.—We object to this for the reason that the witness is not called upon to do more than answer the questions counsel puts to him, and he is not called upon at this time to give his reasons for not stating the fact to counsel, or the reason why he did not volunteer the statement, without any interrogatory by counsel, and we instruct the witness that he need not answer the question.

(Testimony of A. H. Wethey.)

A. Do you want me to answer the question?

By Mr. BICKFORD.—You needn't answer it.

By the WITNESS.—Well, I have no objections to answering it.

By Mr. BICKFORD.—I know; but I don't care to have it go into the record in that way.

Q. Well, would you be willing, Mr. Wethey, without process of the Court to produce those letter-press copies?

A. Yes, sir.

Q. And will you? A. Yes, sir.

Q. Will you produce them this afternoon?

A. Yes, sir. When I said the original copies, I supposed you would know that they were originals.

Q. What did you say?

A. When I said that we hadn't the original letters, I thought that you would probably know that I had copies of them.

(Recess taken until two o'clock P. M. same day.)

Monday, April 28th, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

The witness A. H. WETHEY, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Now, Mr. Wethey, you stated positively this morning that there were no negotiations between yourself and the Senator on one hand and Mr. Cobban on the other between the dates of September 19th, 1899, when you gave

(Testimony of A. H. Wethey.)

McLaughlin the money to pay him and close up the deal, and the early days of the following November. Weren't you very much mistaken in that?

A. Yes; I was mistaken in that.

Q. How did you find out that mistake?

A. Since I left the stand this morning I was looking over the papers and I found that in my examination in chief I submitted data and letters in October in connection with the next deal. In giving the dates this morning I was simply taking the dates of the two deeds, the one in September and the one in November, and I did not recollect how long it was before the second deeds were issued that we discussed this matter.

Q. I beg your pardon, but I hope you will be as careful as you can on these dates, and not rely too much on your memory. A. Yes, sir; I will try to be.

Q. Now, as a matter of fact, calling your attention to the testimony that you gave on your direct examination on page 10-c of the record of your testimony, you were asked by your counsel as follows: "Q. Now, I will ask you, Mr. Wethey, where you obtained that letter? A. From our files in the office. Q. You obtained it from the regular letter files that you keep in the office? A. Yes, sir. Q. From whom was the letter received, and when was it received? A. It was received from Senator Clark, October 10th, 1899. Q. Now, will you kindly read that portion of the letter which bears upon this case, Mr. Wethey? A. 'Butte, Montana, October 10th, 1899, A. H. Wethey, Butte, Montana. I note what Mr. Mc-

(Testimony of A. H. Wethey.)

Laughlin says about the timber which Mr. Cobban has secured. How many million feet is comprised in it, and at what price can it be obtained? Does Mr. McLaughlin know where this timber is located? It seems to me it would be unwise to purchase it without first having it examined and estimated. He states as his reason for the advisability of the purchase that it would compel the Blackfoot people to treat us properly on the Nine Mile. It seems to me that we now have enough timber to accomplish that purpose.'" Now, have you got the letter-press copy of the letter that you wrote to Senator Clark, to which this is an answer? A. I think so.

Q. Where is that, please?

A. I have that letter-press copy here. Shall I read it?

Q. If you please.

A. "Butte, Montana, October 10th, W. A. Clark, Butte, Montana. Dear Sir: Mr. McLaughlin said this morning that Cobban had just got back from a trip to Wisconsin, and had told him that parties there were ready to take all the timber that Cobban has been able to secure on the Blackfoot, and he wished very much that you would take it from Cobban instead of letting it go into the hands of other people. He said it would not only be a profitable investment, but would compel the Blackfoot people to treat you properly on the Nine Mile." That is all in the letter in connection with the subject. Would you like to see it?

Mr. BICKFORD.—The rest of the letter you will observe refers to other matters, Mr. Maynard.

Q. Did you read this last paragraph?

(Testimony of A. H. Wethey.)

A. I did not read the last paragraph, no, sir.

Q. Why not?

A. It has nothing to do with this business.

Q. Well, I will finish the reading of it.

Mr. BICKFORD.—Not until I have examined it; wait just a moment. We object to its being read; it has nothing whatever to do with the case on hearing, and refers to another business enterprise entirely connected with the Bridger Coal Mines, and having very frankly and very openly presented our books here for the use of counsel on the other side, we now shall object to the reading of the paragraph mentioned and object to its going into this record because it refers to no matter whatever connected with the matter in controversy in this case, that it is irrelevant and immaterial, and is not proper cross-examination, because it is concerning nothing that was brought out on the examination in chief.

Mr. MAYNARD.—I would say in answer to the objection of counsel that I agree with him and Mr. Wethey that in these letters that have been introduced and those that shall be introduced, I only care to have read into the record and made a part of the record that part of each of the said letters which refers to the subject matter now under investigation, and the reason why I think this last paragraph should be read is because I think it does relate to the subject matter which has been read into the record and contained in this letter. If I am mistaken in regard to that, then I certainly would not insist upon this being read

(Testimony of A. H. Wethey.)

into the record, and will consent to have it stricken out when, either in the hearing or personally, I am convinced that this last clause does not refer to that which preceded it.

Mr. BICKFORD.—I will submit it to the Master.

Mr. MAYNARD.—The question is whether it is not open for judgment and comparison and argument that that last clause does specifically refer to what is contained in the letter.

Mr. BICKFORD.—I am going to object to that and ask the Master to certify it. It refers to McLaughlin and a trip to the Bridger Coal Company. The proposition is this, that while it does not cut any particular figure, it is the opening wedge.

Mr. MAYNARD.—I do not want to claim any opening wedge, and I do not want any opening wedge.

The MASTER.—I will see that nothing irrelevant goes in.

Mr. BICKFORD.—Then let it go in over our objection.

Mr. MAYNARD.—The concluding portion of Mr. Wethey's letter is this: "Mr. McLaughlin is going to start tonight on the five o'clock train for Bridger, and you could reach him at Missoula either by telegram or telephone during the day. Respectfully yours, A. H. Wethey."

Q. Now, you do not claim, Mr. Wethey, that this last paragraph does not refer to that which you have just stated before in regard to McLaughlin's desiring to buy the tim-

(Testimony of A. H. Wethey.)

ber and your writing to Mr. Clark for instructions, do you?

Mr. BICKFORD.—We object to that because it is not a question of what the witness claims with regard to it; it is simply a question as to the facts stated in the letter, and the claims made by counsel with reference to the admissibility of the testimony, and not the claim of the witness as to what relation the testimony bears to the facts in the case.

A. The last paragraph was simply intended to advise the Senator where he could reach Mr. McLaughlin if he wanted to make a direct answer, and I did not think that it had anything to do with the proposition, and, therefore, I did not read it.

Q. Now, you recall the fact that your talk to McLaughlin was on the 19th of September and this letter of yours is dated the 10th of October?

A. That is not the same transaction.

Mr. BICKFORD.—There is no question asked; you need not answer.

Mr. MAYNARD.—I had not finished my sentence.

A. Now, then, are you prepared to say that this was the first time that you had seen Mr. McLaughlin or Mr. Cobban or anyone else since closing up the transaction on the 19th of September?

A. I will say, that, judging from that letter, which is the best evidence I have, after closing up the transaction in September that nothing further had come up before me in regard to further transaction until this time when Mc-

(Testimony of A. H. Wethey.)

Laughlin said that Cobban had returned from a trip to Wisconsin where he had been offering other timber to parties there.

Q. Do you recall the fact of Mr. McLaughlin's calling upon you at the office outside of this letter?

A. Well, the letter refreshes my memory. McLaughlin used to come up to see me so often that I could not locate any particular visit unless there was something to call it to my memory.

Q. This letter having now been read by you, is your memory so refreshed that you can recall now the fact of his calling upon you and stating certain things to you at that time?

A. I say in my letter that McLaughlin said this morning that certain things were so, and I presume he must have been in my office.

Q. And you also say in your letter "And had told him"—that McLaughlin said Cobban had told him—"That parties there were ready to take all the timber that Cobban had been able to secure on the Blackfoot"?

A. Evidently McLaughlin told me that, or else I wouldn't have said so.

Q. Are you able to say now that when Mr. McLaughlin told you that fact, you were completely surprised in regard to Mr. Cobban's purchases up in the Blackfoot country?

Mr. BICKFORD.—We object to this because it is not proper cross-examination and relating to nothing that was testified to by the witness in his examination in

(Testimony of A. H. Wethey.)

chief, and because it calls for a conclusion or a statement of a conclusion of the witness and not for a fact; it calls for the state of mind of the witness rather than a statement of a fact within his knowledge.

A. You want my opinion in the matter, do you?

Mr. BICKFORD.—You are not called upon to give a matter of opinion, Mr. Wethey.

Q. I want an answer to the question.

Mr. BICKFORD.—He wants to know if you were surprised.

A. Well, I cannot give you anything definite, but I can give you my opinion.

Mr. BICKFORD.—We object to the witness giving his opinion.

Mr. MAYNARD.—I am willing to take Mr. Wethey's opinion.

Mr. BICKFORD.—We are not prepared to allow him to testify as to his opinion at that time. You need not answer, Mr. Wethey.

The EXAMINER.—The witness can do whatever he pleases about that.

(Last question was not answered.)

Q. I note further in the letter that you say, "He said it would be only a profitable investment, but would compel the Blackfoot people to treat you properly on the Nine Mile." Now, the idea of the investment occurs there, does it not, Mr. Wethey?

(Testimony of A. H. Wethey.)

A. That was Mr. McLaughlin's suggestion?

Q. Are you able to state that that was the first time that McLaughlin had suggested the fact that it would be a good thing for the Senator to buy this timber, irrespective of its restraining influence upon the Blackfoot Milling Company?

A. I would say that that was the first time he had made that suggestion since the closing of the former transaction in September.

Q. Then he had made the suggestion before?

A. I do not know that he had at all, but after we closed up the business in September I don't think it was reopened or brought to our attention again until the 10th of October.

Q. While you do not think from your present recollection, you are not prepared to swear, are you, Mr. Wethey, that the subject of investment, buying this timber land as an investment had not been previously referred to by Mr. McLaughlin?

A. Well, I am on the stand here to testify under oath, and I am trying to tell the truth as near as I know it, and now you ask me whether I am prepared to swear?

Q. Yes.

A. I am swearing all the time as I understand it.

Q. Very well. You may answer the question.

A. Yes, I am prepared to say, when the matter was first brought up in the first transaction whether or not McLaughin represented to us that it might be a good in-

(Testimony of A. H. Wethey.)

vestment for us to purchase timber on the Blackfoot because we might be able to sell it to the Blackfoot company at a higher price.

Q. Then, why did you say that the sole reason for buying the forty millions was for defensive purposes in your operations against the Blackfoot Milling Company?

A. Well, while Mr. McLaughlin may have suggested a purchase as an investment, I do not think that the Senator would have invested anything there as an investment; he can invest his money to better advantage elsewhere. The Senator's object in buying was to protect himself.

Q. If that was so, how do you explain the fact that in the first letter that the defendant writes to you after receiving this letter of yours dated October 10th, 1899, he used these words "I note what Mr. McLaughlin says about the timber which Mr. Cobban has secured. How many million of feet is comprised in it and at what price can it be obtained"?

Mr. BICKFORD.—We object to the question on the ground that the witness is not compelled or called upon to explain the words found in a letter written by someone other than himself and because it is irrelevant and immaterial to the issue in this case and is not proper cross-examination.

Q. Can you answer that, Mr. Wethey?

A. I suppose that the Senator thought that, if it was being offered to him for an investment, it might be offered at a much lower price than before.

(Testimony of A. H. Wethey.)

Q. The price before was $1.25 a thousand?

A. Yes, sir.

Q. As a matter of fact, when you did close the deal with Mr. Cobban later, it was on the basis of $1.25, was it not? A. Yes, sir.

Q. And that was the same price that he had made before?

A. He did not know it, or else he would not have asked the question, I presume; he asked the question what price is it to be. If he had known what the price was he would not have said that.

Q. And he writes this letter, as you note, Mr. Wethey, and uses the words that I have quoted, and then follows: "It seems to me that we have enough timber to accomplish the purpose"?

A. That purpose is to protect our interest.

Q. Namely, to compel the Blackfoot people to treat you fairly on the Nine Mile?

A. Yes. sir; that was the original purpose, as I stated before, in taking up this timber.

Q. It is admitted here that having already enough timber to accomplish the purpose for which the original contract was made, on the 10th of October, the question of purchasing more timber is under consideration?

A. Yes, sir, and it was not accepted at that time. We had a four months option on it as I testified in chief, on this additional timber.

Q. Now, then, will you please give me the second letter that you wrote, your letter-press copy?

(Testimony of A. H. Wethey.)

A. The next letter I have on the subject is dated October 17th, Shall I read it?

Q. If you please.

A. "Butte, Montana, October 17th, 1899. R. M. Cobban, Missoula, Montana. Dear Sir: Mr. Clark tells me that he will make the loan of $30,000 to you on the forty million feet of timber to which you have already securedtitle on the basis proposed, namely, that he will advance 75¢ per thousand for the timber, all the deeds to be in his name, and he to have the option for four months from the date of the deeds to take up the timber by paying the 50¢ per thousand more, or $1.25 per thousand in all. He will give you an agreement to reconvey the property to you in case he does not exercise the option, upon your refunding the amount of the loan with interest at the rate of 10% per annum. I have written Mr. McLaughlin, giving him the details of the transaction, and will await his report. In regard to making the further loan of $30,000, Mr. Clark has not yet decided. As soon as he decides whether he will make an additional loan or not, I will advise you. Respectfully yours, A. H. Wethey."

Q. What is the date of that letter?

A. The 17th of October.

Q. Are you prepared to say that that was the next letter that you wrote to Mr. Clark in point of time after the one dated October 10th?

A. I am not prepared to say whether that is or not. I asked our young ladies to go over these books and put

(Testimony of A. H. Wethey.)

paper in when these letters came on the subject, either to the Senator or to Mr. Cobban in connection with this these transactions, but from the beginning of the letter there, that Mr. Clark tells me he will make the loan, I infer that I had some conversation with him on the subject.

Mr. BICKFORD.—Who is that letter addressed to, Mr. Wethey?

The WITNESS.—To R. M. Cobban.

(By Mr. MAYNARD.)

Q. So that all the investigation that you have made of your letter-press book, is what some young women in your office have done at your direction?

A. Yes, sir.

Q. Now, then, I would call your attention to your own testimony which you gave on your direct examination. I read Cooper, page c-12, "I hand you a letter, Mr. Wethey, I will ask you where you obtained the same"—Referring to letter which is marked No. 2—"A. Letter No. 2 I obtained from my letter files this morning in the office. The letter is dated Butte, October 11th, 1899. Q. Who wrote that letter or dictated it? A. W. A. Clark; it is signed by him. Q. And addressed to you? A. Yes, sir."

Mr. BICKFORD.—I read from the letter so identified as follows, on the 11th of October: "I note what you say about the timber on the Blackfoot, and that Cobban—"

The WITNESS.—I have already read you one letter

(Testimony of A. H. Wethey.)

of my own to the Senator on the 10th; I don't know that I wrote him again.

Mr. BICKFORD.—I will hand you the letter, Mr. Wethey, so that you may know about that.

Mr. MAYNARD.—I would like to call the Examiner's attention to the original report in the case which is on the page marked A. H. Wethey—D., page c-12. I noted one, and I don't know how many more corrections that ought to be made. I would prefer you should compare it with me, Mr. Wethey.

The WITNESS.—(Reading:) "I note what you say about the timber on the Big Blackfoot, and that Cobban has obtained options on sixty million feet, but that he would wait until we could examine the timber if he thought we would be willing to take it. I note the price would be $1.25 per thousand, which McLaughlin thinks could be sold for $2.00 per thousand; we might have to wait a long time. I will decide this matter soon. It seems to me that as our principal object was to hold the Big Blackfoot Milling Company level as to our operations on Nine Mile, that we have already sufficient timber for that purpose."

Q. Now, did you find your letter to which this is a reply? A. Yes, sir, my counsel has it.

Mr. BICKFORD.—I will state, if your Honor please, that this letter is a three or four page leter and refers to a great many other things besides the timber proposition. The phrase, or the portion of the letter which

(Testimony of A. H. Wethey.)

refers to that is in the last part of it, and can be read by the witness if it is thought desirable.

The WITNESS.—(Reading:) "In reference to the Cobban timber on the Blackfoot on which he has obtained options, etc., I understand he has secured options on sixty million feet. Mr. McLaughlin says that Cobban has just returned from Great Falls and has some parties in the east who are anxious to take up all the timber that he can secure, but McLaughlin thinks it would be better for you to take up the timber than to have a third company go in there. If you would entertain the idea of taking the timber subject to its being inspected and accepted by McLaughlin, Cobban would wait until the examination was completed. with the understanding as the tracts are inspected and approved, they should be taken up. As he has only a limited time in which to act, he would like to know your decision as soon possible. My understanding is that the price of the property would be the same as you paid before, $1.25 per thousand. McLaughlin says that you will be able to sell every foot of it for $2.00 per thousand." That is the letter and I suppose the girls had not noticed it.

Q. That is dated Butte, Montana, October 11th, 1899, Hon. William A. Clark, Butte. Montana, dear sir, and signed respectfully yours, A. H. Wethey?

A. Yes, sir.

Q. Now, Mr. Wethey, what did you mean when you wrote the Senator "in reference to the Cobban timber

(Testimony of A. H. Wethey.)

on the Blackfoot on which he has obtained options, etc. I understand he has secured options on over sixty million feet." How did you come to use those words?

A. Those words are the result of my conversation with McLaughlin, and covered my understanding of the matter at the time.

Q. Did Mr. McLaughlin content himself in his conversation with you with just that bare statement?

A. Yes; if he had given me any details of just what the options consisted of, I should have repeated that to the Senator; that was all the information I had. I supposed they were options secured from parties who owned land in that section?

Q. He did not explain anything to you about the nature or character or kind of those options?

A. No, sir, and I did not inquire.

Q. Why, at this date and this distance from the time of the conversation, are you able to swear positively to that, Mr. Wethey?

A. Because I did not know that this land was taken up under this Stone and Timber Act until after these actions were commenced.

Q. Would that be the only reason that you could assign for your distinct memory of the fact that you did not in conversation with him ask how Cobban was taking up these claims or from whom he was getting them or who was assisting him in purchasing them?

A. Because, if I had known all those facts, I should have stated them to the Senator.

(Testimony of A. H. Wethey.)

Q. You did not know at all? A. No, sir.

Q. Who was assisting Cobban, if anyone?

A. I did not know that anyone was assisting Cobban.

Q. And you understood that Cobban was taking up claims alone and unaided by anyone?

A. As far as I knew; I never inquired and did not know.

Q. Never inquired and never had heard anything about it? A. No, sir.

Q. But it was talked over at the time between you and McLaughlin that he was to take the same course that he had with the former tracts and cause an inspection of the timber to be had?

A. Well, he would not— The timber was being sold to us at a price per thousand, and it was necessary to ascertain how many thousand feet of timber were being turned over, or what amount of timber the deed represented.

Q. You stated as a distinction between these deals and the former one that the Senator might entertain the notion of buying them because if it was to be an investment, it would be at a price less than that which he had paid for the first tracts, namely, less than $1.25?

A. I say, that as he asked what price the timber was to be in his letter, that that gave me that idea.

Q. But there never was any proposition made by Cobban or anybody working for him or by Mr. McLaughlin that the price would be less than $1.25?

(Testimony of A. H. Wethey.)

A. I do not remember any.

Q. And when you used the word "McLaughlin says you will be able to sell every foot of it for $2.00 per thousand," you stated that for the purpose, did you not, of being more or less persuasive along the line of the Senator buying it, on the theory of an investmente?

Mr. BICKFORD.—Wait a moment. We object to this for the reason the letter itself and the statement therein contained show just what the witness means, and he is not called upon to explain his meaning any further than the letter itself explains it.

A. No, sir.

Q. Now, then, calling your attention to the letter marked No. 3, on page 14-c of your direct examination, which was dated October 12th, 1899, and in which the defendant uses these words: "I hardly think it worth while for Cobban to take the trouble to come to Butte, as I will have no time to discuss the matter with him, and in fact I have about made up my mind not to purchase any more timber on the Blackfoot. I believe we have enough now to serve our purposes as mentioned. Perhaps it would be better for you to wire him that I cannot consider it in order to prevent his coming." Now, was that letter written without any letter having been received from you?

A. I don't know; I will see. Yes, sir, there is a letter from me to the Senator dated Butte, Montana, October 12th, 1899, Hon. W. A. Clark, Butte, Montana. Dear Sir: With reference to Cobban's timber options on

(Testimony of A. H. Wethey.)

the Blackfoot, he called me up over the telephone last evening and said he would be here Friday morning with maps, etc., so that if you would care to discuss the situation with him you will have an opportunity to do so. Yours respectfully, A. H. Wethey." In my examination in chief there were some letters on that same subject submitted.

Mr. BICKFORD.—The letters have all been submitted that refer to that.

The WITNESS.—It is just the last paragraph, Mr. Maynard.

Q. Now, then, when you used the words "options on the Blackfoot" the sentence reading, "In reference to Cobban's timber options on the Blackfoot," did you use that word having in mind the meaning of the word "options" or not?

A. I supposed that he had written options from parties up there; I did not know. That is the term we use here when we get an option on a mining claim for thirty or sixty days or something of that sort. That would be the only meaning of the word to me in connection with the word "option."

Q. And you used the word in that sense.

A. Yes, sir. I never saw any options, you know; Mr. Cobban never showed me any.

Q. What did you say was the information which you had on the 12th of October when you used that word?

A. Simply that McLaughlin had told me that he had options.

(Testimony of A. H. Wethey.)

Q. And you think that if Mr. McLaughlin had said anything more to you in regard to the matter, that you would be liable to remember it?

A. I think if he had told me more, I should have repeated it to the Senator, because I gave him all the information I had, so that he would be fully advised on the subject.

Q. You do not, in writing to the Senator as you did and as you do, undertake to state all the facts stated to you in conversations had betwene yourself and other parties?

A. As far as possible I give him all the details that I know, so that he can judge for himself. I do not undertake to influence his judgment; I can simply give him the information I have as briefly and concisely as I can, and then he can do as he pleases.

Q. But it is a question of judgment with you at the time as to what is material and what is not material, is it not?

Mr. BICKFORD.—We object to that as argumentative, and as not proper cross-examination, and as simply opening up a discussion between counsel and the witness now upon the stand without calling for the statement of any facts that is material to the trial of this case. Further, the witness has already answered the question.

A. I would say that to a certain extent that is true; at the same time I could not conceal part of the facts

(Testimony of A. H. Wethey.)

that I have and lay all the facts before him at the same time.

Q. No, but the fact that you desired to communicate to the defendant was the fact that Cobban had options on this land, for the purchase of this land.

A. That is all I knew about it.

Q. Now, isn't it entirely possible that you might have been informed of the facts and circumstances leading up to the securing of these options by Cobban, which you did not regard at the time as material at all, to communicate to the Senator?

Mr. BICKFORD.—Wait a moment. We object to that on the ground that it is purely argumentative and calls for no statement of facts and is not proper cross-examination.

A. I would certainly have communicated to the Senator any information of that kind that I had to give him. If I had know what kind of options they were, I would have told him, so he could judge for himself as to the value of the options.

Q. You say to that extent. What do you mean by that; just give me your thought now.

Mr. BICKFORD.—I will say to the witness now that your constructeion of the word "option" need not be given unless you have a construction that you wish to give to the gentleman.

A. I have already given him my construction of the

(Testimony of A. H. Wethey.)

word "option"; you are not asking me to do that again, are you?

Q. No, I am not. I am asking you to explain your last answer.

A. Simply this, that any information I had in regard to the transaction, I should have repeated to the Senator as fully as possible, so that he would be as fully advised as I was myself on the conditions surrounding the transaction.

Q. If, as a matter of fact, you were convinced in your mind either for one reason or another that the deal which resulted in the option was an honest and legal one, if you were satisfied of that, how would you regard that as essential or material in any way to communicate the details to Senator Clark?

A. It never occurred to me, and I am sure it never occurred to him that there was anything dishonest or illegal in any of these transactions.

Q. I am not talking about that at all now. I am now talking about the point that you would not have regarded it as necessary in this letter to have entered into any of the details which led up to and resulted in the giving of the option, if you thought that the transactions preceding it were honest and legal, and therefore the details would simply lengthen out your leter for no good purpose.

Mr. BICKFORD.—Objected to for the reason that it is argumentative and an effort on the part of counsel to

(Testimony of A. H. Wethey.)

obtain an answer from the witness concerning facts of which he said he has no knowledge concerning, and is not proper cross-examination.

Mr. MAYNARD.—I desire to have it appear upon the record, that I do not wish to mislead the witness in any way, but he has testified that in using the word "options," if anything else had been said about it, that he would have felt under obligations to have inserted all of the details in his letter to the defendant.

Mr. BICKFORD.—In other words, you are trying to get the witness to say that he knew all about the preliminary steps with reference to getting title to this land, and that he and Cobban had a thorough understanding about it, and you want him to state it now that way, whether he knows it or not.

Mr. MAYNARD.—No, I do not, but the acuteness of counsel clearly sees the purpose of the inquiry.

Mr. BICKFORD.—I should think myself very dull if I did not follow it.

Mr. MAYNARD.—The purpose is to show this, that the witness may have known things at the time that he regarded as legal and honest, but which he did not regard as material or important, and therefore he did not communicate them to the defendant, and he himself has forgotten it during the years that have passed since he wrote the letter.

Mr. BICKFORD.—Hence the objection on the part

(Testimony of A. H. Wethey.)

of the defendant to the question propounded by counsel is for the reason that the witness has already stated that he has given all the facts in detail and in full which came to his knowledge with reference to the transaction now inquired about.

Mr. MAYNARD.—In answer to that, the witness has stated that he has forgotten much of the transaction and is able to testify more distinctly and clearly than he otherwise would, since his mind and memory have been refreshed by the reading of the letter, and his attention being called to it, and I desire for the purpose of refreshing his recollection to call his attention to the details of this letter that he wrote.

The WITNESS.—I am very sure that if I had known the terms of the options, I should have advised the Senator.

Q. Now, the next day you received a proposition from Mr. Cobban.

Mr. BICKFORD.—That is the one put in evidence the other day, marked for identification No. 3.

A. I think there is one marked as an exhibit, with a note attached.

Q. Did you?

A. Yes, sir, Mr. Cobban came over and saw me.

Q. You did not wire him not to come, then?

A. If I did it was too late to stop him, or he may have been coming to Butte under any circumstances about other business.

(Testimony of A. H. Wethey.)

Q. I will ask you whether you did or did not wire him not to come?

A. My impression is that I tried to reach him in Missoula.

Q. Is it anything more than an impression?

A. Well, it is a pretty distinct impression.

Q. But as a matter of fact you did not reach him and he came to Butte on the 13th?

A. He came to Butte on the 13th or 14th.

Q. What did he do on that day?

A. He had an interview with me, either on the 13th or the 14th.

Q. Now, then, please state just what took place there?

A. I think he submitted a written proposition.

Q. Is that the first thing he did when he came in your office?

A. Well, I rather think he took his hat off when he first came in.

Q. And this proposition that he handed to you is the one that appears on page Cooper c-18, is it not?

A. Well, I could not tell.

Q. Well, it starts in, "Butte, Montana, October 13th, 1899. W. A. Clark, Butte, Montana, Dear Sir, I now have about forty million feet—"

A. Yes, that was the written proposition that he brought in at that time.

Q. That was the first that you heard of this proposition, was it?

(Testimony of A. H. Wethey.)

A. From Cobban direct, it was.

Q. Who had you heard of it from before?

A. From McLaughlin.

Q. When did he speak to you about it?

A. I think it was about the 10th of the month.

Q. What did he say to you about that?

A. He said that Cobban had returned from Wisconsin and had some more timber that he would like to sell.

Q. That he had returned from Wisconsin and had some more timber that he would like to sell?

A. It is just a repetition of what I said before.

Mr. BICKFORD.—This is a mere repetition of the testimony already given by the witness—

The WITNESS.—On October 10th, it is.

Mr. BICKFORD.—Brought out in pursuance of the letter which was read dated October 10th, 1899.

Q. In that letter he said, "I now have about forty million feet of title timber on the Big Blackfoot river and about thirty million feet of scrip timber, making a total of seventy million feet, and I expect to have between now and December 15th sixty million feet in addition to this. This, I think will be the limit that can be acquired at a price under $2.00 per thousand. This timber is principally pine and fir, with some tamarack, and is as well located as that already purchased by yourself." Now, did you know whether or not, when he spoke of having forty million feet of titled timber on

(Testimony of A. H. Wethey.)

the Big Blackfoot river, that that was the same land on which he had obtained options?

A. I supposed it was.

Q. Did you have any idea about it at all?

A. No, sir.

Q. In the conversation that you say you had with McLaughlin previous to receiving this proposition, hadn't he told you anything about it?

A. I don't suppose that McLaughlin knew.

Q. That was not the question I asked you, Mr. Wethey.

(Question read.)

A. No, he had not given me any details of the options or of the timber.

(By Mr. BICKFORD.)

Q. You had a notion that he referred to this titled timber that you speak of here, did you not?

A. Yes, sir.

(By Mr. MAYNARD.)

Q. You did not know anything about how he had acquired the land at this time? A. No, sir.

Q. If the options had resulted in the titles, you did not know or did not hear from anybody how it had been paid for? A. No, sir.

Q. Nobody ever told you that Cobban had been assisted by anybody?

A. No, sir, nor I never inquired.

Q. Well, to have it go along consecutively, Mr.

(Testimony of A. H. Wethey.)

Wethey, you say that you did not know nor never inquired—I will just skip a little bit for the purpose of asking you this question, and I am reading from the page marked Cooper, c-23, of your testimony. "By Mr. Bickford.—The letter referred to reads as follows: 'Butte, Montana, October 16th, 1899. Mr. A. H. Wethey, Butte, Montana. Dear Sir: I have yours of the 14th inst., relating to Mr. Cobban's proposition for a loan, and note his statement that he has acquired title to forty million feet of timber on the Blackfoot, which he and his relatives have paid for.'"

A. Yes, sir. I did not know anything about what kind of title it was.

Q. If you never had heard anything about how Mr. Cobban had paid for these lands, how do you explain the fact that the defendant in this case in writing to you, in answer to a letter that he had received from you, says, "I have yours of the 14th inst., relative to forty million feet of timber on the Blackfoot which he and his relatives have paid for."

A. Yes, that seems to be the answer.

Q. How did the Senator get the information that Cobban's relatives had paid for this land if you did not know anything about it?

A. Cobban must have told me, I suppose.

Q. You just said a second ago that you never had heard from anybody as to how he had paid for this land or what assistance he had received?

(Testimony of A. H. Wethey.)

A. Well, I think that you or I misunderstand each other a little there.

Q. Well, I will just ask the stenographer to go back a few questions and see for yourself. (Last testimony read.) You had never been told and had never inquired, and now on the 16th day of October, the defendant writes to you that he notes in a letter received from you of date the 14th, that you inform him that Cobban wants to sell him land which he and his relatives have paid for?

Mr. BICKFORD.—We want to interpose an objection, and we do at this time object to the misstatement of counsel with reference to the statement contained in the letter as read by him. The letter reads as follows: "And note his statement that he has acquired title to forty million feet of timber on the Blackfoot which he and his relatives have paid for." The construction given to the language used by counsel is not the construction that the letter itself imports, inasmuch as the letter imports a statement from Cobban to the writer of the letter, and not a statement made by the witness now upon the stand to the defendant.

Mr. MAYNARD.—In answer to the objection of counsel I again read the letter: "Butte, Montana, October 16th, 1899. Mr. A. H. Wethey, Butte, Montana. Dear Sir: I have yours of the 14th inst., relating to Mr. Cobban's proposition for a loan, and note his statement that he has acquired title to forty million feet of timber on

(Testimony of A. H. Wethey.)

the Blackfoot which he and his relatives have paid for."

Q. Now, then, just give me your letter of the 14th, please, Mr. Wethey?

A. "October 14th, 1899, Hon. W. A. Clark, City. Dear Sir: R. M. Cobban says he has acquired title to forty million feet of lumber on the Big Blackfoot now that he and one or two of his relatives together have paid for. If you make the loan coupled with the option he is willing to have the deeds to the land put in your name so that your security would be absolute. He would require an agreement from you that if you did not take up the option, that you would reconvey the timber back to him upon his paying you the full amount of the loan with interest. If you are willing to do this, he would like to convey in good sized lots, say twenty-five millions at a time. No advances to be made by you until the property or timber had been examined and reported upon by McLaughlin and the title passed on by Bickford or some other attorney. Cobban's desire to get a loan arises from the fact that it would liberate a large amount of his money and enable him to secure a great deal more timber. In addition to the forty million referred to, he has thirty million located with scrip. The United States title has not been acquired to this (I suppose it was that; it is obliterated and I cannot make it out)—he wants to control one hundred and fifty million feet if possible. Yours truly, A. H. Wethey." The letters marked in the corner, "O. K.—R. M. Cobban."

(Testimony of A. H. Wethey.)

Q. Now, Mr. Wethey, if you had not been told or made no inquiries as to how Mr. Cobban had paid for this land how did you come to write to the Senator the fact that Mr. Cobban and one or two of his relatives had paid for it?

A. The letter shows for itself that Cobban had told me that he and his relatives had paid for this land?

Q. How did you come, then, to tell me a moment ago that nobody had told you in regard to it?

Mr. BICKFORD.—We object to that because the witness has never stated that he never heard how the land was paid for, the statement of the witness being that he did not know the manner of acquiring title to the timber that was proposed to be sold by Mr. Cobban.

Mr. MAYNARD.—I say, as a matter of fact, that the record shows that this witness has at least three or four times on direct examination and so far on cross-examination, sworn positively that he knew nothing whatever as to how Cobban had acquired title to these lands and that nobody had told him and that he had never made any inquiry.

The WITNESS.—There is nothing there to show that I made any inquiry.

Q. But you asserted as a fact in a letter to your chief that Mr. Cobban had paid for this land with one or two of his relatives' assistance?

A. Yes, sir.

Q. Then you have learned from some source as to

(Testimony of A. H. Wethey.)

how Mr. Cobban was acquiring title to these lands, had you not?

A. In that way, yes, sir, as the letter shows.

Q. Then you were mistaken when you swore differently, were you not?

Mr. BICKFORD.—We object to that because the witness has never sworn differently and the record does not show that he has sworn any differently from what he now testifies.

Mr. MAYNARD.—I would leave that to the mind and conscience of the witness himself.

Mr. BICKFORD.—That is not the forum that we are trying the case to.

Mr. MAYNARD.—I would be willing to leave it to him; that is a good enough forum for me.

Mr. BICKFORD.—We submit that the witness need not answer the question; the record shows whether he has sworn differently about it. You need not answer the question unless you choose.

The EXAMINER.—I think you had better answer it.

The WITNESS.—I think that perhaps I was misunderstood in this way that when I speak of Mr. Cobban getting assistance, I meant outside assistance. Who his family are—I do not know who his relatives are; they may be his wife or sister or anybody else.

Q. And this proposition that Mr. Cobban made to

(Testimony of A. H. Wethey.)

you when he came into your office on the 13th of October, and which you had discussed with McLaughlin on the 10th, was accepted by the defendant, was it not?

A. The proposition was accepted, yes, sir.

Q. And how much was paid Mr. Cobban under this proposition when acted upon?

A. I have given all that data in my direct examination. Do you wish me to give it over again?

Mr. BICKFORD.—You had better answer his question.

A. Well, I will have to have the exhibits.

Q. Have you not got it in mind?

A. It is difficult to remember the exact sums, the odd figures.

Mr. BICKFORD.—You have a right to have the exhibits.

The WITNESS.—I understand you want the details of the transaction that was closed up in November?

Q. I just simply want to have it in a clear and concise manner, just the amount of timber that was bought by you under this proposition and what was paid for it.

Mr. BICKFORD.—That is not the question; we submit, that was formerly asked the witness, and another answer is called for rather than the answer to the former question.

A. The land covered in this proposition is shown by the exhibits numbered 283 and 284. Exhibit No. 283

(Testimony of A. H. Wethey.)

is for $33,718.75, and Exhibit No. 284 is for $35,512.50, and those two deeds were paid for in the following manner. On November 17th, I paid W. A. Clark and Bro., to take up a loan made by them to Cobban—

Q. Now, just wait a minute. Just right there. Where is that $10,000 note?

A. It is among the exhibits. The $10,000 note is marked Exhibit No. 288.

Q. Now, was that the first loan that had been made to Cobban?

A. That loan had been made by W. A. Clark & Bro's bank to Cobban.

Q. Well, the question is was that the first loan that had been made by the banking firm—

A. It is the first loan that I know about.

Q. Are you prepared to say that the banking house of Clark & Bro. had not made a loan before of the same amount of which this was a renewal?

A. I would say that this was not a renewal?

Q. How do you know that?

A. Because—that is my general knowledge of it. like you would know anything else.

Q. And on that basis of information—

A. Cobban did not do business with our bank, and as you say, this may be a renewal of some previous loan; it may be for all I know, I cannot tell you. But I do not believe it was; I think it was an original loan.

Q. Now, then, if Mr. Cobban did not do business with your bank, how was he able to obtain a loan of

(Testimony of A. H. Wethey.)

$10,000 on his own individual name with no endorsement or security of any kind?

A. Mr. Cobban was a man of good standing and he was supposed to be worth a considerable amount of money.

Q. Was there any conversation had with you in regard to his obtaining $10,000 from the bank?

A. Yes, sir.

Q. There was? A. Yes, sir.

Q. What was that conversation?

A. My recollection is that he was making some deal in Missoula and wanted some money and asked if I could arrange with the bank to loan him $10,000, and my recollection is that I went down in the bank with him and spoke to the cashier and said that Mr. Cobban wanted to use $10,000, and he let him have it.

Q. You had already testified that you had nothing whatever to do with the management of the bank?

A. Yes, that is true. It was entirely within the cashier's discretion whether he would let Mr. Cobban have the $10,000 or not.

(By Mr. BICKFORD.)

Q. It had nothing to do with the timber transaction at all, did it?

A. As far as I remember it did not.

Mr. MAYNARD.—I object to that question as being interpolated here as a gross violation of the rules of conducting the examination and as leading, and move that the same be stricken out.

(Testimony of A. H. Wethey.)

The EXAMINER.—Yes, Mr. Maynard has the witness, and counsel ought not to put the question.

Mr. BICKFORD.—Yes, sir, I quite agree with the gentleman.

(By Mr. MAYNARD.)

Q. Now, then, as a matter of fact, the negotiations for the sale of these timber lands had been pending for some time, had they not, between you and Mr. Cobban?

A. Yes, sir.

Q. He had been in your office on the 13th of October?

A. On the 13th or 14th of the month, yes, sir.

Q. And the whole question was under consideration in your office? A. Yes, sir.

Q. Now, Mr. Cobban was a comparative stranger to you, was he not?

A. No, sir, I had known him a good many years.

Q. Do you think that, if you had not gone down to the bank with him and seen the cashier in regard to this loan, that the cashier would have loaned Mr. Cobban $10,000 without any endorser?

Mr. BICKFORD.—We object to this because it calls for a mere opinion of the witness and not for a statement fact from him and it is not proper cross-examination.

A. I could not say positively whether he would not.

Q. Well, you know—

A. I know that Mr. Cobban had not asked the cashier for it and had not been refused.

(Testimony of A. H. Wethey.)

Q. You know that he had not asked, and therefore had not been refused? A. Yes.

Q. But you know very well that it is the rule in your bank that where the borrower has no security of his own to put up as collateral, that an endorser is required, do you not?

A. Well, I do not know that that is the invariable rule; it depends on who the party is who borrows the money.

Q. While it is not an invariable rule in the sense that there is no exception to it, isn't it to your knowledge a general rule in banking?

Mr. BICKFORD.—We object to that as not proper cross-examination; a general rule in banking has nothing to do with the particular loan that is now under discussion.

A. I should think that that was the rule, yes.

Q. You know it very well, do you not?

A. I presume so.

Q. Don't you further know that you at that time in conversation with the cashier of the bank, substantially, if not in so many words, guaranteed this payment?

A. I think quite likely I told the cashier that we had some negotiations with Mr. Cobban and that if the deal went through, before paying him any more money I would protect the bank. The subject of loaning Mr. Cobban a considerable amount of money had been under way for some time, and I expect that it was my im-

(Testimony of A. H. Wethey.)

pression at that time that the loan would be made, and it was made.

Q. When was it in fact made?

A. On the 18th of November, 1899.

Q. Then the fact of it is that two-thirds, or more than half of a month elapsed after the negotiations of that loan at the bank under your influence, before there was anything known personally by you that arrangements would be made by which you could faithfully loan that money to Mr. Cobban, which you did afterwards loan?

A. Well, I think the loan would be considered a safe to loan Mr. Cobban under any circumstances.

Q. Whether—

A. Whether there had been a deal on or not.

Q. Or whether the deal was consummated or not?

A. Yes, sir.

Q. And you so informed the cashier at the time?

A. Yes, sir.

Q. Now, was that the first time that Mr. Cobban had secured a loan through your influence?

A. Yes.

Q. And it was the last time, wasn't it?

A. It was the only time.

Q. The only time in his life that he ever got any note discounted at the bank without an endorser to your knowledge, is it?

Mr. BICKFORD.—Objected to as not proper cross-examination, not relevant or material.

(Testimony of A. H. Wethey.)

A. It is the only loan I know anything about.

Q. Now, what do you say that that money was used for?

A. I do not know what he used it for.

Q. And therefore you are not prepared to say that this money that was obtained at the bank in the way that you now have stated was not used by Mr. Cobban in paying for these very timber lands, are you?

A. Well, I could not tell you what he did with the money; I never asked him.

Q. You did not ask him and you did not know?

A. No, sir.

Q. And you do not know now?

A. I do not know now.

Q. Now, then, you say that on the 18th of the following month was the proposition was accepted, and certain moneys paid to him? A. Yes, sir.

Q. And the first bit of money that was used by you was to take up this note for $10,000?

A. Yes, sir.

Q. Now, how much more money did you give him at that time?

A. He gave a new note for $41,538.75, which covered all that I paid him, including the $10,000 I paid the bank.

Q. Let me understand you, Mr. Wethey. When this matter was consummated, you paid the bank $10,000 and interest and took up the note? A. Yes, sir.

Q. Did you give him any money at that time?

(Testimony of A. H. Wethey.)

A. Yes, sir.

Q. How much money did you give him?

A. I gave him at the time $29,082.95, and a week later I sent him $1,792.50, and that, with the amount I paid to the bank, $10,063.30, makes up the amount of the loan at 75 cents per thousand, amounting to $41,538.75.

Q. Now, then, what was this money used for that you sent him in cash? A. I do not know.

Q. You do not know but what this money that he obtained was used in buying and paying for this timber that is under consideration in this case?

A. I haven't the faintest idea.

Q. That amount, $11,000, was secured by a mortgage on the land?

A. Well, it was an absolute deed with an arrangement to reconvey in case Mr. Clark should finally decide not to take the land.

Q. That he would reconvey?

A. Yes, sir. The deed in W. A. Clark's name was taken to be as good security as Mr. Cobban could furnish at that time, I suppose.

Q. Do you know of any security having been given for this land other than the land named in it?

A. No, I don't know of any other.

Q. You know there was not any, don't you; that is, you are morally convinced that there was not?

A. Yes, sir.

Q. And then when was the next payment that you made?

(Testimony of A. H. Wethey.)

A. The next payment that I made was on the 10th of February, 1900, a loan of 75 cents per thousand on twenty-six million six hundred and ten thousand feet of timber, amounting to $19,957.50, which is marked Exhibit No. 292.

Whereupon, further hearing was adjourned until Tuesday morning, April 29th, 1902.

Tuesday, April 29th, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

A. H. WETHEY, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Referring to Mr. Cobban's letter of date October 13th, 1899, Cooper, page 18, you stated that Mr. Cobban came to your office to see you in regard to this letter? A. Yes, sir.

Q. In this letter he says: "I have maps and other data here with me, which could be submitted to you if desired." Did Mr. Cobban bring the maps and other data with him?

A. No, I think not. He might have brought the maps, or a map. My understanding of the other data was that they were maps and abstracts.

Q. Well, I am now inquiring as to the fact, as to whether he did bring to your office the maps and other data that he herein refers to?

A. I don't think so. I told him—my recollection is that I told him that it would not be worth my while

(Testimony of A. H. Wethey.)

to examine those maps and data, that it would be immaterial to me unless Mr. Clark decided to make the loan, in which case it would go to our attorney.

Q. Well, you say that he might have had a map?

A. He might have had a map.

Q. Did he have a map?

A. I couldn't tell you positively whether he did or not at that time.

Q. What did you say?

A. I couldn't tell you positively whether he did or not at that time. I have a map in my office that he gave me, but I don't think he gave it to me at that time.

Q. When do you think he did give it to you?

A. Oh, I think sometime afterwards, probably some months afterward.

Q. You cannot tell when? A. No, sir.

Q. Did he give you any other data?

A. I don't remember any other.

Q. Well, now, do I understand that in accordance with his proposition when he came to your office, he did bring these things with him and offer to show you them, and you declined to do so because it would do no good?

A. I remember him coming into the office with a valise filled with papers which he offered to show me, and I told him I did not have time to look at them. I remember that very clearly.

Q. Well, was it on this occasion?

(Testimony of A. H. Wethey.)

A. Well, I couldn't tell you whether it was on this special occasion or not.

Q. Did he tell you what there was in his valise?

A. No, sir; he opened his valise and showed a whole lot of papers. I didn't look at them; I didn't look at one of them.

Q. And he didn't refer to the contents in any way?

A. No, sir.

Q. So you had no knowledge at any time what was in the valise? A. No, sir.

Q. Why, didn't you obey the instructions of the defendant in this case?

A. What were those?

Q. That he gave to you on that very day.

By Mr. BICKFORD (To the Witness.)—You are entitled to know what instructions he refers to.

By the WITNESS.—I do not.

By Mr. MAYNARD.—I will read. I read from page 20, Cooper-c:

"General Office of William A. Clark, Butte, Montana.

Butte, Montana, October 13th, 1899.

Mr. R. M. Cobban, Butte, Montana.

Dear Sir: I have yours of the 13th inst., relating to the timber lands on the Big Blackfoot. I wrote a note to Mr. Wethey to-day to examine the maps and get all the information he could about these matters.

Respectfully yours,

W. A. CLARK."

(Testimony of A. H. Wethey.)

A. In my letter to Senator Clark on the 14th of October, I gave him all the information I could that I got; that is what I testified to yesterday.

Q. Did you say that yesterday?

A. Yes, sir.

Q. With reference to the letter?

A. Yes, sir.

Q. Well, refer to that letter, then, and let me see what—

A. Do you want me to read it all over again?

Q. No, I want to look at it, and I would like also to know if Mr. Clark wrote to you on that day?

A. I read that yesterday afternoon.

Q. I have now examined your letter contained in the letter-press copy-book, that was read into the record yesterday. There is no reference to your having obeyed the command of the defendant that you examine the maps, and I ask you now why you didn't obey those instructions.

By Mr. BICKFORD.—We object to this upon the ground that it is irrelevant and immaterial, and not a proper subject for cross-examination of this witness.

A. I followed the spirit of the instructions as nearly as I could. If my letter in reply to him had not been sufficient, he would have asked me for further information, I suppose.

Q. And you can give now no reason for not having examined the maps after having been instructed to do so.

A. If I had looked at the maps I would have known

(Testimony of A. H. Wethey.)

nothing more about it. I couldn't tell by looking at the maps what kind of timber it was.

Q. But you say you have got a map in your office that was given to you by Mr. Cooban?

A. I did have, yes, sir.

Q. And it is there now?

A. I believe it is there now; I haven't looked for it in a long time.

Q. And when you looked at the map, did it not give you any information at all?

A. It just showed Missoula county with blotches here and there where our ground was, but that was all Greek to me.

Q. So, you are very certain, then, that you did not at that time in accordance with the instructions contained in this letter of October 13th, examine the maps and get all the information you could about these matters?

A. As I said before, my letter of the 14th covered all the information I had gathered.

Q. Where is this letter of Mr. Clark's, the defendant, to you? A. It is here, sir.

Q. Have you read that in evidence?

A. Yes, sir, you have got it right there before you.

Q. This is the one you read a moment ago. "I have yours of the 13th, etc."

A. Relative to the timber land on the Blackfoot, yes, sir.

Q. Very well. It says, "I wrote a note to Mr. Wethey to-day."

(Testimony of A. H. Wethey.)

A. I don't know; if I have not submitted it, it must have been lost or destroyed. It might have been just a slip of paper, as he does often leave a written memorandum on my desk and want certain information. I never keep them.

Q. Well, have you made any personal search whatever for—to find out whether this note is in existence now or not?

A. I did so—no, I haven't looked myself, I have had our stenographers look over all the files.

Q. For this particular note?

A. For all notes. No, sir, I did not for that particular note.

Q. But she overlooked one yesterday that you called my attention to.

A. Yes, sir.

Q. Are you able to say that she hasn't overlooked this?

A. No, sir, I am not able to say whether she has or not.

Q. On October 17th, 1899, page 20, you wrote to Mr. Cobban: "Mr. Clark tells me that he will make the loan of $30,000, to you on the 40,000,000 feet of timber, etc."

A. Yes, sir.

Q. Have you got that letter now? A. Yes, sir.

Q. Have you read that letter in evidence?

A. Yes, sir, that is the original letter, you know.

Q. What did you say?

A. Yes, my original letter to Cobban, we have got a copy of it in the testimony there.

Q. Of October 17th? A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. Certainly, I know that. I asked you if you had the letter that you received from Mr. Clark?

A. No, sir, Mr. Clark—I see there in my letter that Mr. Clark tells me that he will make the loan, and I infer from that that he must have had some conversation with me on the subject.

Q. Do you know anything about that conversation, or are you able to state when you had this conversation, when you say this, are you able to say that that was an oral communication rather than a written communication?

A. I would say that it was an oral communication, yes, sir.

Q. You state in this letter, "I have written Mr. McLaughlin, giving him the details of the transaction, and will await his report." Will you please produce that letter? A. Do you wish that I should read it?

Q. If you please?

A. "Butte, Montana, October 17th, 1899. Mr. H. W. McLaughlin, Missoula, Montana."

Q. October. What date was that?

A. October 17th. (Witness continued.) "Dear Sir: I beg to advise you that Mr. Clark has agreed to advance seventy-five cents per thousand on the 40,000,000 feet of timber on the Big Blackfoot, to which Mr. Cobban has already acquired title, and which he and his relatives have paid for. It is understood that Mr. Cobban is to have the deeds to the land and timber put into Mr. Clark's hands, so as to make Mr. Clark's security absolute for the land. Cobban is to pay interest on the loan at the rate of ten per

(Testimony of A. H. Wethey.)

cent per annum, and the loan is for four months, and is covered with an option on the timber to Mr. Clark, allowing Mr. Clark to purchase the timber, if he wishes to do so, at the end of the four months, for $1.25 per thousand. Mr. Clark is to execute an agreement to reconvey to Mr. Cobban, in case he does not avail himself of the option. A part of the agreement is that Mr. Clark will not advance any money on the land and timber until it has been examined by you and reported upon fully, and the titles passed upon by Bickford or some other attorney. Mr. Cobban wants Mr. Clark to advance from $60,000.00 to $70,000.00, in all, on these same terms, except that he suggests that on land and timber located by scrip, he will be willing to accept a loan of fifty cents per thousand instead of seventy-five cents. The same option to go with all the timber upon which Mr. Clark makes advances.

Mr. Clark has not yet decided whether he will increase the loan to $30,000.00 or not. In the meantime he would like you to communicate and report on the 40,000,000 feet already secured, as soon as practicable.

Respectfully yours,

A. H. WETHEY."

Q. In this letter which you have just read you use the words, "which he and his relatives had paid for." Please explain how you could use and write those words, when in answer to this question of your counsel, on page 20, "What, if any knowledge, did you have at that time with reference to the manner in which this land had been ac-

(Testimony of A. H. Wethey.)

quired from the United States," and you answered, "I had no knowledge whatever?"

A. What time was referred to?

Q. At the time that Mr. Cobban offered the lands for sale?

By Mr. BICKFORD.—This refers, Mr. Wethey, the question, to yours of July 29th, 1899.

A. You see that time, Mr. Maynard, is several months in advance of this letter.

Q. Very well. In July you had no knowledge?

A. No, sir.

Q. And at the time you wrote this letter you did have knowledge?

A. You will notice in my letter to the Senator of October 14th, I said that Mr. Cobban said that he and his relatives had paid for this land.

Q. And at that time Mr. Cobban had told you that?

A. He told me at that time that Mr. Cobban and his relatives had bought this land and had paid for it. I might say, further, that it was in this transaction that the question of scrip lands first came up, and my understanding was that he and his relatives had been buying scrip, Forest Reserve scrip, or Soldiers' Additional scrip, or something, to use on timber lands.

Q. Where was Mr. Cobban when he told you that?

A. In my office.

A. Yes, sir.

Q. Had he and his relatives been buying these lands?

Q. Yes, sir.

(Testimony of A. H. Wethey.)

Q. How did he come to tell you that?

A. I don't know.

Q. Well, wasn't the subject matter of the manner in which he was acquiring these timber lands under consideration at the time? A. I think not.

Q. Well, if it wasn't under consideration, how did he come to volunteer that one bit of information?

A. Well, I cannot tell you unless—it is pretty expensive buying scrip, and that he and his relatives were buying scrip together.

Q. Well, you don't know the amount, and you don't say that it was confined to the scrip land, do you?

A. I mean to say that my understanding of that remark was that it referred to the scrip lands.

Q. And not to the land acquired under the Stone and Timber Act?

A. Well, I didn't know that he was acquiring any land under the Stone and Timber Act. He always spoke of that as deeded land. It never occurred to me that he was getting land under the Stone and Timber Act.

Q. Well, would it have made any difference to you in your dealings with him if you had known that he was getting it under the Stone and Timber Act?

By Mr. BICKFORD.—We object to that upon the ground it is not proper cross-examination, and as calling for an opinion from the witness, and not a question of fact, and as referring to something that was not brought out on the examination in chief of the witness.

A. Will I answer the question?

(Testimony of A. H. Wethey.)

Q. Yes.

A. If I had known that he was acquiring the land in any illegal way, I certainly would not have touched it.

Q. Well, what was there necessarily illegal about acquiring lands under the Stone and Timber Act?

A. I don't know anything about the Stone and Timber Act. I have never read it.

Q. Well, you don't know anything more about the Stone and Timber Act than you do about this Lieu Land Scrip Act or the Homestead Act, or any of the other acts of Congress?

A. Very little; I know very little of any of these acts, because I don't have anything to do with them.

Q. But you know well enough that if they can be acquired legally, that they can also be acquired illegally?

A. Well, I suppose there is an honest way and a dishonest way of doing things, but we tried to do it in an honest way.

Q. So that you could say, if your attention had been called to it, that you did not know how it was acquired?

A. If he had been doing it in an honest and legal way, that would have been all right, and I presume our attorney would have advised us, if it had not been done so. We relied on our attorneys to do so.

Q. But in the conversation which you had with him, in which he told you this land that he was selling to you, and upon which loans were to be made, and were being paid for by his relatives, the conversation commenced and

(Testimony of A. H. Wethey.)

ended there. Is that the way you wish it to be understood? A. Yes, sir.

Q. And you don't know how it was called up, and you have no explanation to make further than what you have made?

A. No, sir, Mr. Cobban's interviews with us were always very brief. I have lots of work to do, and this was just a little side issue. I didn't devote very much time to it.

Q. Did you get a report from Mr. McLaughlin?

A. I never saw any report except that he told me that everything was all right.

Q. What did you say?

A. I never saw any report, except that he told me everything was all right.

Q. What do you mean by using the words: "I will await his report?"

By Mr. BICKFORD.—I don't see that there is any chance for a misconception as to what he meant.

A. Well, I suppose I meant that I would wait until Mr. McLaughlin said whether the timber was all right or not.

Q. Well, as a matter of fact, you did await his report?

A. I believe so. The report wasn't made until some little time after that. The loan wasn't made until after the report was submitted.

Q. But you are unable to say whether that was in writing or oral, given to you in person?

(Testimony of A. H. Wethey.)

A. I think most likely most of it was oral—an oral communication.

Q. Have you any knowledge on the subject at all as to the character of that report?

A. I know I had no written report describing in detail the land in question, or the timber, as to its accessibility or anything of that sort. I said we had Mr. McLaughlin's word that the timber was all right.

Q. You know of his having personal interviews with the Senator about that time, do you not?

A. Who?

Q. Mr. McLaughlin?

A. No, I don't know as he did.

Q. You don't know that he did not, do you?

A. Very much more likely not to have had interviews than to have had interviews.

Q. Didn't you see Mr. McLaughlin in and about your office?

A. He very often came to see me, but he didn't see the Senator.

Q. Never, you mean?

A. Well, I didn't say never; once in a while, but not very often.

Q. Yes. Once in a while might have been one of the times when Mr. McLaughlin made his report to the Senator in person, might it not?

By Mr. BICKFORD.—We object to that as not being proper cross-examination, and as calling for a conclusion from the witness, and not for a statement of fact.

(Testimony of A. H. Wethey.)

A. I don't think so. I don't believe he ever made any report to the Senator about it.

Q. Then, do I understand that you desire to have your belief on the subject stand against the sworn testimony of Mr. McLaughlin, in which he says that he did have several conversations with the Senator in regard to that?

By Mr. BICKFORD.—We object to that upon the ground that it is immaterial and irrelevant, and not proper cross-examination. You needn't answer that question. Mr. Wethey.

By the WITNESS.—I have no objection to answering Mr. Maynard's question, because we have nothing to conceal in this matter, and I want him to be thoroughly satisfied with it.

Q. Well, I insust upon an answer.

A. What is the question?

By Mr. BICKFORD.—Now, we submit to your Honor that there is no necessity for the witness answering the question. It is not a proper question. It calls for a conclusion and not for a statement of fact. The witness having testified to the best of his knowledge with reference to the facts that is called for by the question.

By the EXAMINER.—Yes, I should deem that the question was immaterial and irrelevant.

By Mr. MAYNARD.—Well, I won't press the question if they decline to have the witness answer it.

By the WITNESS.—I don't decline to answer it.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—I decline to have the witness answer it; that is the position I take in the matter.

Q. Well, you saw Mr. McLaughlin around the office. shortly thereafter, did you not?

A. Well, he frequently came to the office.

Q. Yes, and Senator Clark was in the office?

A. Not in my office.

Q. Oh, very well; but he was in an adjoining room?

A. Part of the time might have been and might not.

Q. What do you mean by might not?

A. He isn't in his office a great deal.

Q. He was in the city, wasn't he?

A. Yes, sir, I believe he was; I believe he was in the city; I don't know—

By the EXAMINER.—What were you going to say; "I don't know" something.

A. I was thinking of a later time.

Q. I wish you would produce now, Mr. Wethey, the letter that the defendant refers to on page Cooper-c-22, "I have yours of the 16th inst. and note contents."

A. What is the letter? Shall I read it?

Q. Yes, you may read it.

A. "Butte, Montana, October 16th, 1899. Honorable W. A. Clark, Butte, Montana. Dear Sir: Your favor of the 16th inst. in regard to Mr. Cobban's proposal, duly received. Mr. Cobban was in this morning and I showed him your letter, which he says is satisfactory as far as it goes; that is, that you will loan seventy-five cents per thousand on 40,000,000 feet of lum-

(Testimony of A. H. Wethey.)

ber he has already purchased, but he says he has options and has made advances on a great deal more timber, and will need a loan of $60,000, or $70,000, in all on the same terms. He says that on land located with scrip he will be satisfied with an average of fifty cents per thousand, instead of seventy-five cents. On all timber on which you make advances, you are to have the same privilege or option to purchase the whole of it at the end of four months, for $1.25 per thousand. I presume so far as the loan on the 40,000,000 feet is concerned, we may regard the matter as settled, and I presume I had better write to Mr. McLaughlin and advise him of the transaction, and have him arrange to have the timber examined and reported upon. Or would you rather do this yourself? I presume Mr. Bickford will be in Kalispell for a week yet, but it will take some little time to have the timber examined, and no doubt he will be through by the time the abstracts and reports are all completed ready for examination.

Respectfully yours,

A. H. WETHEY."

Q. Now, this—it is true that this letter of yours which is dated October 16th— A. Yes, sir.

Q. —but didn't you write another letter to him on the same day?

A. I don't think so; not on that subject, I don't think.

Q. What?

A. I think not; not on that subject.

(Testimony of A. H. Wethey.)

Q. You will note, Mr. Wethey, that the defendant, Mr. Clark says, "I have yours of the 16th inst. and note contents."

A Well, with reference to my letter, the one I handed you—that refers to my letter, the one I handed you.

Q. But you start off in that letter with the sentence, "Your favor of the 15th inst." in regard to Mr. Cobban's proposal, duly received." Now, where is that letter?

A. I don't know.

By Mr. BICKFORD.—This letter that counsel was reading from, from the record, dated the 16th, is of the same date as the letter that he has just been reading, that the witness has been reading, and refers to the same letter that has just been read.

Q. You understand, Mr. Wethey, this letter of yours, of October 16th says—addressed to the defendant—"Honorable W. A. Clark, Butte, Montana. Dear Sir: Your favor of the 16th inst."—that is the same date—"In regard to Mr. Cobban's proposal, duly received." Now, that is a former letter of the Senator to you, which you say you kept. Now where is that?

A. I don't know where it is, unless it is the other one which you have got there, dated the 16th. I will have to compare them to see which one is the proper letter; they are both dated the same date, and to see which one is the answer to the other.

Q. Well, can you compare it here?

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—It is all in. It is the one that was marked for identification, No. 7, and it will be found in the record. Now, I am reading from the same letter that you have been reading. It will be found on the next page. There you will find the letter referred to already introduced in evidence.

Q. Is this letter that I call your attention to, one that you refer to in—in which you say—"Your favor of the 16th in regard to Mr. Cobban's proposal, etc."

A. I think it is, yes. Without any question, I should say that that is the letter. You see he says there, "I am willing, all these conditions being complied with, to make a loan on the 40,000,000 feet of timber." And in another letter he says: "So far as the loan on the 40,000,000 feet is concerned, you may regard that matter as settled."

Q. And then please refer to your letter to him of the 14th inst.

A. I have read that two or three times.

Q. Don't lose that other page, please. That is the same letter, is it? A. Yes, sir.

Q. I wish you would read the latter part of that; it seems to be blurred out.

A. "Cobban's desire to get a loan." Is that it?

Q. Yes, sir.

A. "—arises from the fact that it will liberate a large amount of his money and enable him to secure a great deal more timber."

Q. Yes, sir, that is it.

(Testimony of A. H. Wethey.)

A. Is that all you want?

Q. Yes, sir.

Q. What you say to the Senator, and in his reply he says: "I note his desire is to reduce the money he has invested. and to secure additional timber land."

A. Yes, sir.

Q. Well, now, who informed you of the fact that he wanted to use this money to secure additional timber lands?

A. Mr. Cobban; his name is signed to this letter of the 14th, and it is marked "O. K. R. M. Cobban."

Q. What is that?

A. It is marked here, "O. K." and is signed, R. M. Cobban.

Q. And read it over to Mr. Cobban?

A. Yes. sir, or else he read it himself and "O. K.d" it.

Q. And why was that done?

A. It was in the nature of a contract, or in the nature of a proposition to make a contract, so that there should not be any misunderstanding as to the terms.

Q. Well. now, when you wrote to the Senator that he wanted this money to secure additional timber lands, did you have any conversation with Mr. Cobban on that subject?

A. The only thing that occurs to me in connection with that subject is that he was buying scrip to put it on this land for which he had to pay cash.

(Testimony of A. H. Wethey.)

Q. There was no suggestion made at the time by him that these additional lands that he was to acquire with this money of the defendant's was to be turned over to the defendant?

A. I beg your pardon.

(Question read.)

A. Only I stated in the letter that the Senator had an option that he could exercise within four months, if he desired.

Q. Not only on the lands which Cobban had already bought, but on all lands to be bought?

A. That he might acquire, I suppose.

Q. Well—

A. Well, whatever the conditions are named here, that is all I can go by.

Q. Well, didn't you understand at the time that these lands were to be bought for the defendant?

A. No, sir, he was buying them for himself. I didn't know and had no reason to know, and had no way of knowing that we should ever buy it.

Q. But, as a matter of fact, as it turned out, the defendant's money bought the lands and he obtained title to the lands?

By Mr. BICKFORD.—We object to that for the reason that it is a misconstruction of the statement already made by the witness, and calls for a conclusion from the witness, and the counsel is undertaking to put a construction upon the answer to be made by the witness. He has distinctly stated that there was no

(Testimony of A. H. Wethey.)

agreement or contract whereby money to be used was for the purpose of acquiring land for the benefit of the defendant in this case, and the witness has distinctly stated so, and counsel now asks the witness to conform his answer to his construction of the testimony that has already been given, and we object to it because it is not proper cross-examination.

A. May I answer the question?

By Mr. BICKFORD.—You can answer, yes. You remember that this refers to loans not on the 40,000,000 feet but on other land.

Q. That he was talking about in this proposition.

A. The Senator eventually bought the lands, yes.

Q. That is what I say.

A. Yes, he eventually bought the lands, but you want to convey the impression that the money that we paid Cobban at this time was used for buying the lands.

Q. Yes, that was it. I say that that is the fact.

A. Yes, and I say that it is not—yes, sir.

Q. He got the money from you? A. Yes, sir.

Q. And he paid for the lands and the lands were afterward transferred to the defendant by him?

By Mr. BICKFORD.—Now, we object to this for the reason that no particular lands are referred to in the testimony, or in the question propounded by counsel, and no distinction is made by counsel between script lands and lands acquired by any other means, and the question is propounded in such a way as to mislead the

(Testimony of A. H. Wethey.)

witness as to lands acquired by Mr. Cobban, and we object to it also for the reason that it is not proper cross-examination.

By Mr. MAYNARD.—To have the record clear, I distinctly called the witness' attention to the words contained in this letter of October 16th, addressed to him, and signed by W. A. Clark, and the examination which is based upon it, to wit: "I note that he (meaning Cobban), desires to realize the money he has invested, and to secure additional timber lands."

By Mr. BICKFORD.—And the witness has answered that the additional timber lands referred to in the letter refers to lands to be acquired under the lieu land selection law, or the Act of June 3d, 1897, and not to timber lands secured under the Stone and Timber Act, and the witness has distinctly stated that he knows nothing about any other agreement or any transaction whereby the title to lands was to be acquired under the Timber and Stone Act; and the question, as propounded to the witness, is irrelevant and immaterial, in that it does not draw any distinction between lands acquired under the different acts, which have been located, and we object to it because it is not proper cross-examination.

Q. Mr. Wethey, do you know under what act of Congress the additional timber lands that were bought with money that was furnished to Cobban by the defendant, was acquired?

(Testimony of A. H. Wethey.)

A. The only timber lands that I knew of being acquired was scrip lands, forest reserve scrip.

Q. Well, what do you know about that?

A. Well, I knew that parties were offering us forest reserve scrip, and that Cobban was buying forest reserve scrip. We bought forest reserve scrip for ourselves, and Cobban also said that he had been buying forest reserve scrip.

Q. And is that all you know about it?

A. Yes, sir.

Q. And he said nothing to you about the lands that had been acquired by him under other acts of Congress?

A. No, sir.

Q. Can you give any other reason why he referred to acquiring lands under the scrip lieu act?

A. Well, I understood that the lands acquired under the scrip lieu act, that he had to pay cash for the scrip before he could use it, and took considerable money.

Q. Well, you can recall no specific definite time, or conversation that you ever had with Mr. Cobban on the subject matter of the method and the way in which he was acquiring lands, can you?

A. No definite time, no.

Q. And no definite conversation?

A. No definite conversation, no.

Q. And aside from the impression that you may have received, you know not under what act of Congress he acquired this additional timber land.

A. Except under the forest reserve scrip business.

(Testimony of A. H. Wethey.)

Q. And the basis—

A. That I know definitely.

Q. Well, how do you know that?

A. Because the land was constantly referred to as scrip land.

Q. What did you say?

A. The land was frequently referred to afterwards, and in my letters about that time, as scrip lands, and the other was known to me as deeded lands.

Q. Well, did you at the time have a distinct comprehension of the difference between "scrip lands" on the one hand, and "deeded lands" on the other?

A. I always felt some distinction between the two. I supposed the deeded lands were better, because the scrip lands had not been patented from the Government, and some of the forest reserve scrip might have been defective; that was our experience.

Q. What is that?

A. That was our experience. Some of the scrip that we bought and placed on the land proved to be defective, and was not accepted by the land office, and Cobban had the same experience. The title to deeded lands that our attorney passed upon and said the title was all correct, that we never questioned at all, and had no idea that there would be any question at all about, or trouble arise.

Q. Well, was there any distinction in the passing of title by your attorney between scrip lands on the one hand and deeded lands on the other?

(Testimony of A. H. Wethey.)

A. There was this distinction. While we would loan seventy-five cents a thousand on deeded lands, we would only lend fifty cents per thousand on scrip lands; we required a larger margin.

Q. Well, was that a condition precedent which you exacted from Mr. Cobban?

A. Why, that was the arrangement we had with Cobban.

Q. Well, the arrangements that you had with Cobban, but did that come about as a condition that you exacted from him?

A. Well, we didn't exact any conditions until he came to us and asked us for a loan, and then he made that distinction.

Q. Well, I say when you say you made that distinction, do you mean by that that you imposed that condition?

A. I think so; I think he agreed to that, or volunteered it.

Q. Well, isn't that an entirely different thing; isn't it true as a matter of fact that Mr. Cobban himself, on his own motion, made an offer to take fifty cents on scrip lands, without your naming any conditions whatever?

By Mr. BICKFORD.—We object to that for the reason that it is not proper cross-examination, and upon the further ground that it is irrelevant and immaterial and has no bearing upon any of the issues in this case

(Testimony of A. H. Wethey.)

whatever, and the witness has already answered the question.

Q. Will you please answer the question?

A. I don't see that it makes any difference; I think it was Cobban's proposition that he would take fifty cents and that simply confirms the impression that I had that the scrip title was not as good as the other title.

Q. Do you know how much scrip timber Mr. Cobban conveyed?

A. I think in the neighborhood of sixty million feet.

Q. Well, now, are you prepared to say that it was more than thirty million feet? A. Yes, sir.

Q. How do you know that?

A. Just from recollection.

Q. What is your recollection based on?

By Mr. BICKFORD.—We object, if your Honor please. The witness is not obliged to give what his recollection is based upon; he should be asked to respond only to specific questions asked by counsel, and he is not called upon to give the basis of his recollection.

By Mr. MAYNARD.—I want to know whether that came from an examination of books or from an examination of deeds, or whether it came from an examination of abstracts which he at one time had, or whether it came from conversations that he had with Mr. Cobban, or whether it is a recollection based upon anything except a mere impression which he may have received from some source that he knows not of.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—Counsel is at liberty to make the inquiry along the lines that he has indicated, except that the witness has not testified in his examination in chief with reference to any scrip lands whatever, and therefore it is not proper cross-examination for the reason that it relates to nothing brought out in the examination in chief, and relates to nothing which is pertinent to the issues raised by the pleadings in this case.

A. My recollection is just the same in regard to scrip land as it is in regard to any other land.

Q. Well, now, did you ever make an examination of any abstracts presented by Mr. Cobban to determine the question as to whether it was scrip land or not?

A. No, sir; I never examined any abstracts at all.

Q. Did you ever examine any deeds?

A. No, sir.

Q. From him of any kind?

A. Oh, I examined the deeds which he presented, conveying the lands from himself and wife to the Senator; those are the only deeds that I looked at.

Q. Well, in those deeds was there any reference whatever to the act of Congress under which he had acquired the title to the lands referred to?

A. I don't think so.

Q. Was there anything in the deeds which would in any way inform you what part of the lands was scrip lands?

A. Only that he told me personally that it was—that it covered scrip lands.

(Testimony of A. H. Wethey.)

Q. What deed do you refer to?

A. The deed in which we bought the scrip land, and timber. The deeds are not in evidence. It has nothing to do with this case, and it isn't covered, it isn't referred to in any of the complaints or anything else in this case, and I didn't bring it along.

Q. How many of those deeds were made?

A. I don't remember.

Q. How much was embraced in them?

By Mr. BICKFORD.—We object to this, and we might as well meet it at one time as another, and we object to it for the reason it is not proper cross-examination, and it relates to nothing that was brought out in the examination in chief of this witness, and it is utterly incompetent, irrelevant and immaterial, and does not tend in any way to prove any of the issues raised by the pleadings in this case, and we make this objection and I now instruct the witness that he need not answer the question.

By Mr. MAYNARD.—Now, then, if it is possible that it needs any explanation whatever; I am cross-examining the witness in regard to this letter of October 16th, 1899, written by the defendant in regard to the facts and circumstances connected with the advancement of large amounts of money to Mr. Cobban for the purpose of buying timber.

Q. Now, then, what I want to know is what timber it was; that is all the object of this inquiry.

A. Well, I cannot tell you, Mr. Maynard.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—Wait a moment. We object to the statement of counsel that the letter which he is cross-examining the witness about contains any statement that the money, whether advanced as mentioned in the letter, for the purpose of purchasing timber. We insist that the letter shows clearly and plainly that the letter is concerning a loan which was to be negotiated, or had been negotiated, on timber, the title to which was at that time in R. M. Cobban, and that the cross-examination of counsel relates to lands other than those mentioned in the bill of complaint, and that are in controversy in this case, and we object to the statement of counsel, or the inference drawn by counsel from the reading of the letter, as to the purposes of the loan, upon the land, it being shown clearly by the testimony of the witness and by the letter itself, and by all the facts and circumstances concerning the case, that the loan spoken of was a loan which was an absolute loan on its face, coupled with an option to purchase the timber, which was the basis for the security for the loan, and has no reference whatever to any other timber or timber lands, and is not coupled with any contract for the purchase of any other timber land, than that which is mentioned in the letter as being owned at the time of the latter condition—at the time the letter was written by the person who was applying for the land.

By Mr. MAYNARD.—Now, if your Honor please, one single sentence is sufficient to answer the argument of

(Testimony of A. H. Wethey.)

counsel, and that sentence is a sentence of the defendant in this case. "I note that his desire is to realize the money he has invested, and to secure additional timber lands." Now, if your Honor please, if the title was all in Mr. Cobban—if the title was already in Mr. Cobban, would he want money to secure additional timber lands, and as to what kind of land it was, whether it was land embraced in this bill of complaint or not, is a question of fact to be determined hereafter by the Court. The position of the Government will be that Mr. Wethey knows absolutely nothing about it; that he has sworn over and over again that he had nothing to do with it, and that he relied entirely and absolutely upon the advice of his counsel, and that his time was absorbed in a thousand other things, and that he paid no attention as to how this land was secured, or under what act of Congress, and that is what he has sworn to, and the whole matter of the inquiry into this loan will be determined hereafter.

By the EXAMINER.—I think it is a proper subject of inquiry on cross-examination, in view of the testimony, so far as adduced in the case.

A. I had no knowledge of what timber he was going to acquire. The only thing that occurred to me was that he was buying scrip.

Q. So it resolved itself down again to the question that I asked you. That as a matter of fact these lands that are referred to in this correspondence, ultimately came to the defendant by a proper conveyance from

(Testimony of A. H. Wethey.)

Cobban, with money that was furnished to Cobban by the defendant?

A. The land on which this loan was made, ultimately came to the Senator.

Q. And the loan was made by you?

A. Yes, sir.

Q. In this letter of October 16th, the Senator says: "I notice that he has 30,000,000 feet located with scrip."

A. Yes, sir.

Q. Have you any knowledge of his acquiring any other millions of feet by the use of scrip?

A. My recollection is that he deeded to us nearly 60,000,000 of feet of timber on scrip lands.

Q. But that is based on nothing except your recollection?

A. Well, that is based on the evidence that was submitted at the time he paid for it.

Q. Well, what evidence was that?

A. Well, I believe it was these statements showing how much timber there was.

Q. You stated that no patents were issued at the time you bought from Cobban?

A. I said that it was my understanding that no patents had been issued at that time.

Q. On land that was located by scrip?

A. Yes, sir.

Q. You know that no patents had issued on any scrip lands that you had bought from Mr. Cobban?

(Testimony of A. H. Wethey.)

A. No, I supposed the deeded lands—everything was all right as far as they were concerned.

Q. So you didn't know that it was in truth a fact that not one single patent had been issued at the time of the loan to purchase these lands?

A. I did not know at the time that there was no ground patented at that time.

Q. Well, you know now, do you not?

A. Only from what you have told me.

Q. Now, on page 24, Cooper, c-24, under date of October 20th, 1899, the defendant writes: "I have your letter of the 19th inst., which I return." Where is that letter?

A. I don't know. I presume the impression copy is here.

Q. Well, let us see that, please.

A. Do you mean the letter of the 19th, Mr. Maynard?

Q. Yes, sir.

A. I don't find any record of such a letter, Mr. Maynard. What does Mr. Clark say in his letter, Mr. Maynard?

Q. He says, "I have your letter of the 19th inst., which I return. I have no objection to the proposition which Mr. Cobban has made to us, that is to say, I will make the loan for twelve months, coupled with a four months' option to convey the timber at seventy-five cents per thousand."

A. Now, that is evidently a mistake.

(Testimony of A. H. Wethey.)

Q. And that refers to the letter of Mr. Wethey of the 17th?

A. And that has already gone in evidence here.

By Mr. MAYNARD.—But the Senator don't make any mistakes?

By Mr. BICKFORD.—But the stenographers may.

A. I think it must have been just a little memorandum that I left on the Senator's desk, because I don't see it copied at all.

Q. No, but he says he returns the letter?

A. Well, if it was simply a little note that I left on his desk, which I think it must have been, it would be thrown in the waste basket.

Q. Well, why did you take the trouble to make it an exception to the rule?

A. If it was a letter that I had dictated, it would be copied into the letter-books.

Q. But the Senator refers to the paper as a letter?

A. Yes, but I can give no other explanation of it.

Q. You cannot give any reason why the letter wasn't copied into the letter-book?

A. Only as I have already stated.

Q. And you cannot give any reason why he took the trouble to return the letter?

A. No, sir, I suppose he thought it was no use to him.

Q. Wasn't it a rule of the many, many letters that

(Testimony of A. H. Wethey.)

is disclosed in this record that you sent to him, that he did not return them but destroyed them?

A. Well, he destroyed them.

Q. And that was the rule, was it?

A. Yes, sir.

Q. Now, then, I ask you why there was an exception to the rule in this case?

By Mr. BICKFORD.—And the witness has already answered that he don't know.

A. I don't know.

Q. It would be in no other letter-book than that, would it? A. No, they are consecutive.

Q. Now, as I understood you, the reason why there was a difference in the amount of the loan of seventy-five cents in the one class of cases and fifty cents in the other, is this: That in the case of seventy-five cents, being a loan on deeded lands, and fifty cents being a loan on scrip lands. A. Yes, sir.

Q. What have you to say then, your having given an affirmative answer to that question, to these words of the defendant, contained in his letter of October 20th, in reply to this letter which he returned, and which you have lost and made no copy of. "I would be willing to make a loan on the same basis for an additional 60,000,000 feet of timber; that is to say, to advance seventy-five cents per thousand on located lands, for which he is to procure title, and fifty cents per thousand upon lands upon which he has located scrip."

A. That confirms what I said before, that he would

(Testimony of A. H. Wethey.)

loan him seventy-five cents on deeded lands and fifty cents on scrip lands.

Q. He wasn't to advance the seventy-five cents on lands for which he was to procure titles before the titles were obtained?

A. He didn't make any loans until the titles were in Mr. Cobban absolutely.

Q. If that was so, why should the Senator say that he was willing to advance seventy-five cents per thousand on lands that had been located, and for which Cobban was to procure titles?

By Mr. BICKFORD.—Now, your Honor, we want to call the attention of the witness to the subsequent part of the letter, so that he may answer understandingly, having the whole letter before him. The concluding clause of the letter reads as follows: "Of course, everything would be subject to McLaughlin's approval after having timber estimated, and the approval of Mr. Bickford as to the legal security and the conveyance." You may answer the question in the light of the last sentence in the letter.

A. I think the letter shows for itself better than I can say. It is self-explanatory.

Q. The counsel introduced in evidence a letter of the defendant, of date November 18th, addressed to you: "I note that Cobban is prepared to turn over timber lands to the amount of 55,385,000 feet." Have you got your letter press copy to which this letter was an answer?

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—I want to add the following clause to the question, as being a simple phrase in a sentence: "As soon as deeds and abstracts have been passed upon by Bickford."

A. Does the letter there state to what letter I had reference to?

Q. Well, this letter of the defendant's is dated November 18th.

A. In New York or in Butte?

Q. In New York, yes.

A It doesn't state the date of mine?

Q. What did you say?

A. Doesn't it give the date of my letter?

Q. No, I presume it was just three or four days before that.

A. I have got the letter here, Mr. Maynard.

Q. Well, let us have it, please.

A. Shall I read it?

Q. If you please.

A. "Butte, Montana, November 14th, 1899. Honorable W. A. Clark, 43 Cedar Street, New York city. Dear Sir:—Mr. Cobban was here this morning and left me a list of the land and timber which he is now prepared to turn over to you on his agreement with you, comprising 55,385,000 feet. Mr. McLaughlin and Mr. Bickford are in Helena, and Mr. Cobban will go over to Helena today to submit the deeds and abstracts of title for Mr. Bickford's inspection. The amount to be paid Mr. Cobban on this lot of timber, provided Bickford and Mc-

(Testimony of A. H. Wethey.)

Laughlin approve of it all, is $41,538.75. Mr. Cobban tells me that he and Mr. Dinsmore together have bought the Higgins Block in Missoula. He says the total cost of all the buildings comprised in this building, with the present value of the land, would amount to $150,000.00, but they were able to purchase it for $51,000. He says the buildings will rent for sufficient to pay a very good interest on $125,000.00. He says that having made this purchase, he would like to sell outright the land and timber which is now being turned over to you, and suggests that if you will pay the entire purchase price at the present time, instead of loaning only seventy-five cents per thousand on it, that he will make a discount of five per cent. The total price is $69,231.25, and the five per cent discount is equal to a deduction of $3,461.56. As the matter now stands, you have the option to purchase this timber in four months for a dollar and twenty-five cents per thousand, and might like to exercise the option. I told Mr. Cobban that I would submit the matter to you and advise him as soon as I heard from you." There is another paragraph perhaps that it might be as well to leave out. I will show it to you.

(The part referred to by the witness was exhibited to Mr. Maynard, counsel for the Government, and by agreement, was left out.)

Respectfully yours,

A. H. WETHEY."

Recess taken until two o'clock P. M. same day.

Tuesday, April 29th, 1902, 2 P. M.

Hearing resumed pursuant to adjournment.

The witness, A. H. WETHEY, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Wethey, will you turn to the paper that we were considering just before recess?

A. That last letter?

Q. Yes. Kindly let me see it, please. You say in this letter that, "Mr. Cobban was here this morning and left me a list of the land and timber which he is now prepared to turn over to you on his agreement with you, comprising fifty-five million five hundred and eighty-five thousand feet." Have you that list with you?

A. No, sir, I have not.

Q. Where is it?

A. I think I sent it on to Mr. McLaughlin and Mr. Bickford at Helena.

Q. Wasn't it returned to you?

A. I am not sure whether it was or not.

Q. Have you made any search for it?

A. No, sir.

Q. I wish you would make a minute there, Mr. Wethey, if you please, of the fact—you can't remember all these things, can you?

A. Yes, I will remember it.

Q. To please produce that if you have got it.

A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. Have you any knowledge as to what the land and timber was?

A. It simply showed Mr. Cobban's figures on the land and timber, showing a total of fifty-five million feet, which was sent to Mr. McLaughlin to check over. The amount that we would pay him was based on the amount of timber, and it was necessary for McLaughlin to check it.

Q. It gave descriptions of the land, did it not?

A. I think so; it gave the number of the sections and so on, but I never took any cognizance of that data; it had nothing to do with me.

Q. He also had with him the deeds and abstracts of title?

A. Yes, I said so in that letter, didn't I?

Q. Yes. A. Well, I never looked at them.

Q. Do you know anything about the circumstances under which these lands that were embraced in this list were purchased by Mr. Cobban?

A. No, sir, I never knew anything about it at all.

Q. You don't know whether it was scrip land or not?

A. Well, I knew it was deeded land, because the scrip land was a separate transaction.

Q. Did you note whether the patent had been issued or not? A. I never inquired.

Q. And had no conversation whatever in regard to the matter?

A. No, sir. He simply said that he had those papers with him, and he took them away again.

(Testimony of A. H. Wethey.)

Q. Now, what agreement did you refer to?

A. Well, I think it is dated October 13th or around that date; it was in evidence here this morning—October 13th, yes, sir. The original of this is one of the exhibits. This is a letter date October 13th from Cobban, stating that he had forty million feet of titled timber on the Blackfoot and thirty million feet of scrip timber, seventy million feet in all.

Q. This is fifty-five million five hundred and eighty-five thousand feet.

A. That was what he called his titled timber.

Q. Of the seventy million? A. Yes, sir.

Q. Now, what do I understand—was this second agreement that had been made?

A. All of these letters so far are in connection with this proposition that he made on the 13th of October.

Q. If that was so, do not the letters make up the negotiations which would result in that contract?

A. The letters that I have exhibited here show the complete chain of negotiations carried on in reference to that transaction.

Q. By that transaction you mean that agreement?

A. Well, that agreement that Cobban brought on October 13th, or that proposal, was the beginning of these negotiations.

Q. The proposal which was made by Mr. Cobban was the beginning of the negotiations, and when did it culminate?

A. Well, he was negotiating for a loan, you under-

(Testimony of A. H. Wethey.)

stand. I think it culminated about the 18th of November, when I gave him the money and took his note for $41,000 odd dollars; I think the amount of it is stated in that letter, $41,500 and something.

Q. It culminated on the 18th of November, you say?

A. I think so. Yes, here is the note, dated November 18th, 1899, for $41,538.75.

Q. Now, Mr. Wethey, was not that note given at the time that he was informed by you that his proposal was accepted? A. I presume it was.

Q. Prior to that date, the 18th of November, and the giving of that note, it was still an open matter and unsettled as to whether or not his proposition would be accepted by you?

A. Yes; until this note was given, of course, the question was open as to whether we would make that loan as he had asked for—whether it would be granted or not.

Q. But if you did not make the loan?

A. If we had not made the loan the whole transaction would have stopped.

Q. And he would have got nothing?

A. We should not have made the loan and would not have taken the option on the timber.

Q. Had you determined to take the option?

A. We had determined to make him the loan and take his option, yes, sir.

Q. When was that determined?

A. On the date that the loan was made.

(Testimony of A. H. Wethey.)

Q. That was the 18th of November?

A. The 18th of November.

Q. Certainly. Then before that time, as I say, I will ask you if it is not true that it was open, and that Mr. Cobban did not know whether he would sell the land to you in any way, or get a loan?

A. Mr. Cobban was not acting for us, you understand; he was acting for himself.

Q. I know. I know what your claim is.

A. And if he could have sold the land to his friends in Wisconsin at a higher price, I presume he would have done so.

Q. But I am asking you particularly if it is not a fact prior to the 18th of November it was not at all settled as to whether or not you would make the loan or accept the land either as security or take the title to them.

A. Well, a transaction is never made until it is completed, you understand; at the last moment it might have been that either one of us would have gone back on the proposition.

Q. That is the way you wish to be understood?

A. I want to be understood as saying that there was no conclusion come to, and that at any time prior to the date that the note was given the transaction might have stopped, yes, sir.

Q. Now, if that is so, please tell me how you came to write to Senator Clark on the 14th, four days before agreement was made, as follows: This is from page 498

(Testimony of A. H. Wethey.)

of your letter-book: "Butte, Montana, November 14th, 1899, Hon. W. A. Clark, 43 Cedar Street, New York City, Dear Sir: Mr. Cobban was here this morning and left me a list of the lands and timber which he is now prepared to turn over to you on his agreement with you, comprising fifty-five millions five hundred and eighty-five thousand feet." A. Yes, sir.

Q. Now, if no agreement had been made until the 18th, at the time the note was made, as you say, how did you happen to write four days before that as you did write in this letter?

A Well, this transaction had been going for some weeks, and the proposition was made by Mr. Cobban to the Senator and we accepted it, and in that way I speak of it as an agreement on Mr. Clark's part to advance him the money if he required it, if he had come to us and said that he had made other arrangements and did not need the money, then that would have settled it.

Q. I do not understand that explanation at all. Pardon my obtuseness.

A. Mr. Cobban wanted to borrow money which we agreed to let him have on certain terms. If he had come to us later and said that he did not need to borrow the money, that he had made other arrangements, that would have closed the transaction and we would have had nothing more to do with it. We were not anxious to make the loan, you understand.

Q. And is that your explanation why you use this

(Testimony of A. H. Wethey.)

language, when you admit in the preceding sentence that you had made no agreement whatever with him until the 18th?

A. Yes, that is my explanation of our position, and it is a true explanation. The only agreement that the Senator made was to reconvey, which he signed after the loan was made and that is already in evidence.

Q. You next say: "Mr. McLaughlin and Mr. Bickford are in Helena, and Mr. Cobban will go over to Helena to-day to submit the deeds and abstracts of title for Mr. Bickford's inspection. The amount to be paid to Mr. Cobban on this lot of timber, provided Bickford and McLaughlin approve of it all, is $41,538.75."

A. That is the amount of this note.

Mr. BICKFORD.—There is no question asked.

Q. Now, then, if there had been no agreement made between the defendant in this case and Mr. Cobban prior to the date of this letter, and long prior to the 18th of November, that the defendant would take this land and did agree to buy it and did agree upon the specific price to be paid, subject only to McLaughlin's certificate that there was the amount of timber on the land that Cobban claimed, and subject to the legal opinion of Mr. Bickford that he had the right to convey and could give a good title—how did you use those words in your letter?

Mr. BICKFORD.—We object to this for the reason that counsel, in asking his question, is trying to over-

(Testimony of A. H. Wethey.)

look the difference between a proposed agreement and an agreement actually made; the question having heretofore been answered by the witness in full, it called for a repetition only of the testimony heretofore given by the witness, not only in the written evidence submitted by him but in his oral testimony, and we object to it because it is not proper cross-examination and a mere repetition of what has been before testified. We make the further objection that the testimony of the witness is not that there had been an agreement to convey, but that there had been an agreement to loan, and not an agreement to convey.

A. The testimony I gave this morning and the letters submitted cover all the points that you refer to in that question, and the only way I can answer you is to go all over the evidence and give it to you again. We had no agreement made a long time prior to this date any further back than the letters in October which were exhibited this morning, and in one of those letters to the Senator you will notice that I state to him that I understood that as far as loaning Mr. Cobban some money on about forty million feet was concerned, that that was settled, that is, at any time that Mr. Cobban came in and the land and deeds had been approved by Mr. McLaughlin and Mr. Bickford I could make that loan; but if Mr. Cobban had come in at any time and said that he did not require the loan, that would have closed it as far as we were concerned. We could not

(Testimony of A. H. Wethey.)

have compelled Mr. Cobban to have taken the loan from us unless he had wanted to.

Q. You were not at that time engaged in the business of loaning money on such kind of security, were you?

A. No, we were not engaged in that business, but if Mr. Clark told Mr. Cobban or told me that he would allow Mr. Cobban to borrow money on this certain security, we would have loaned it. We generally keep our word.

Q. All right; that is your answer to that question.

A. Yes, sir.

Q. If there had been no agreement prior to the 18th of November, as you state, either to take the timber or make the loan, please tell me why in this letter that I have already referred to you used these words: "He says that having made this purchase he would like to sell outright the land and timber which is now being turned over to you?" A. That is correct.

Q. If there had been no agreement made prior to this time, how was he turning timber over to you, as you say?

A. He was turning over that fifty-five million feet; it is as security for this loan.

Q. But you say that as a matter of fact it was unsettled, and it was not known that he would have any loan or that you would grant him any loan until the 18th of November, four days after this letter was written?

(Testimony of A. H. Wethey.)

Mr. BICKFORD.—We object to counsel arguing with the witness as to the effect of the language. The language speaks for itself, and any argument that counsel desires to base upon it would be legitimate before the Court, but this is not the forum before which it is the province of counsel to argue with the witness.

The WITNESS.—Mr. Maynard does not perhaps understand what I have been trying to explain, and that is that there was no agreement on Cobban's part to deliver us the timber or to borrow the money from us, but he had asked us if we would loan him money in case he wanted it for this timber, and we had agreed to do so.

Q. Yes, Mr. Wethey, but you have sworn positively three different times that there was no agreement made at all until the 18th of November, four days after this letter was written, by which you decided whether you would make the loan or accept the timber, but that it was an open proposition?

A. No, I did not say that.

Q. Now, if you did not mean that, I think that the record clearly shows that you did state that two or three times?

Mr. BICKFORD.—We renew the objection that it is not proper to argue this question with the witness.

Q. Now, then, if you did not state that, I am anxious that you should explain?

A. I think you misunderstood me.

Q. I think that you are very much mistaken or I am,

(Testimony of A. H. Wethey.)

and it is due both to you and to myself that it should be explained.

Mr. BICKFORD.—We move to strike out the statement of counsel as being an argument with the witness and it is not proper cross-examination, it being the province of counsel to ask questions, and not to argue with the witness.

Mr. MAYNARD.—What I have said was in the spirit of absolute fairness to Mr. Wethey.

Mr. BICKFORD.—I don't doubt that, but it is not the province of counsel to argue with the witness.

Mr. MAYNARD.—Then I shall insist on it on my own part, because I want to get at the exact truth.

The WITNESS.—That is what I am telling you.

Mr. MAYNARD.—My proposition is that Mr. Cobban had made a proposal long before this, and that the letters that we have considered this morning, etc., are relative to the proposition that he had made, and then that the witness says it was all leading up to the question that was addressed to the defendant in this case, as to whether he would take the land or make a loan, and that it was not determined fully on the part of the defendant what he would do until the 18th. Now, then, that is my understanding of the testimony of the witness and what he has sworn to. Now, then, my understanding is to that effect, and my cross-examination is on the theory that this letter clearly showed that in

(Testimony of A. H. Wethey.)

that testimony he is mistaken, because it shows that an agreement had been made long before between the defendant and Mr. Cobban, and that it was being acted upon and that the timber was being turned over and the deeds were being examined and everything being done in accordance with an agreement, not that was to be made, but that had been made.

Mr. BICKFORD.—Now, we object to the statement of counsel, because it is all in the nature of an argument on the merits of the case, which should be addressed to the Court, when it comes to the summing up of the testimony, and because it gives or purports to give the construction which counsel places upon the effect of the testimony which has already been given, and for the reason that the testimony as given by the witness has been misconstrued by counsel, the testimony heretofore given by the witness being clearly to the effect that there never was any agreement or bargain or consummated agreement with reference to the purchase of this timber at all, and that the only negotiations which were pending or in contemplation at this time was the question of a loan of a certain amount of money with the timber as security for the loan, coupled with an option to purchase the timber for a period of four months after the negotiations had been completed, and the testimony of the witness to the effect and only to the effect that the negotiations culminated at the time when the note was signed; that

(Testimony of A. H. Wethey.)

while these negotiations were pending, it was not a completed contract and did not become a completed contract until the 18th or 19th of November, 1899.

Q. Now, Mr. Wethey, did you listen to what your counsel stated?

A. I think he understands what I mean to convey better than you do.

Q. Very well. Is what he has just said correct?

A. Yes, sir.

Q. Very well, that is satisfactory to me, and just as I understood it exactly. Now, then, I ask in the light of what he has just stated, as it has been taken down by the stenographer, and which you say is true, why it is that in your letter of the 14th of November you used the words: "He says that having made this purchase he would like to sell outright the land and timber which is now being turned over to you"?

Mr. BICKFORD.—I want it noted here that the purchase mentioned in the letter concerning the witness is being interrogated is the purchase of the Higgins Block in the town of Missoula.

Mr. MAYNARD.—Certainly.

A. Well, that agrees with what I said before, I think, that all the letters that I have shown here today in October and up to this time, show that Cobban had been wanting a loan, and that I had been authorized to make him a loan if he submitted satisfactory security, and this timber that I speak of in my letter

(Testimony of A. H. Wethey.)

was to be in the nature of security for this loan of $41,538.75, but Mr. Cobban having bought the Higgins Block in Missoula, wanted to sell the timber outright, and offered if we would do so—if we would buy it outright, to allow us a discount of five per cent on the price of $1.25 which he was asking for the timber, but there is nothing that I have said that I can remember that would indicate that we had agreed to buy any quantity, any given quantity of timber. I did not know until he came in that day and told me how much timber he had, how much he was going to ask for a loan for, and as I said before, if he had come to me and said he had concluded he did not want to make a loan, the whole transaction would have fallen through, because we had no signed agreement or written agreement with him except what is shown by this correspondence which we have shown to you.

Q. I fail utterly to comprehend anything of your explanation.

Mr. BICKFORD.—The witness is not to blame for that.

Mr. MAYNARD.—I know that; he is not to be charged with that.

Q. But I cannot understand, and I ask you to explain if you can how, if there had been no agreement made prior to the 18th of November, you write letters in which you say Mr. Cobban had been turning over land to you?

(Testimony of A. H. Wethey.)

A. It all came at the same time; he brought in all of that land at the same time. He had not been turning it over to us piecemeal.

Q. But here on the 14th of November, four days before the agreement, I read again: "He says the total cost of the buildings comprised in this block, with the present value of the land, will amount to $150,000, but that they were able to purchase it for $51,000. He says that, having made this purchase, he would like to sell outright the land and timber which is now being turned over to you"?

A. Well, it was being turned over to us as security for this loan which I was going to make to him as soon as the timber and the title had been passed on.

Q. Why was he turning over land to you preceding the making of the agreement, and when he did not know whether any loan was to be made or not?

A. Well, the agreement he wanted was that we should reconvey the ground to him if we did not take up the option.

Q. Now, the claim of the Government is, and I want you to have it noted here, that you are clearly mistaken in regard to the matter, and that this letter shows conclusively that this land was being turned over under an entirely different arrangement than the one that you refer to?

A. No, sir, there was no other arrangement.

Q. I want no misunderstanding as what the theory of the Government is, and I ask this question in

(Testimony of A. H. Wethey.)

an utter spirit of fairness to see if you cannot explain this letter.

Mr. BICKFORD.—To see if you won't own up to the real truth, he means.

A. Of course, I understand the Government and its representatives have a theory, which they are trying to prove is correct, but I think they are mistaken entirely in their theory.

Q. Very well, and if we are, nobody that is connected with the Government wants to be in any mental position except to find it out just as soon as possible.

A. Well, I am trying to explain our position as clearly as I can.

Q. Well, I desire to say, addressing myself to you in the utmost spirit of fairness, that you are utterly unable to make me understand your explanation.

A. Well, I am very sorry.

Q. Now, on the 18th of November, four days after this letter was written, you did accept Mr. Cobban's proposition of October 14th? A. Yes, sir.

Q. And in what way?

A. I made him the loan and took his note therefor.

Q. And what loan was that?

A. The amount of the loan is $41,538.75, and the note is marked Exhibit No. 286.

Q. Now, then, that was the first loan that was made on the timber as security, was it not?

A. That was the first loan that I made to Cobban with the timber as security.

(Testimony of A. H. Wethey.)

Q. And out of that forty-one thousand odd dollars, you paid him how much in cash, $27,000?

A. No, I gave him a New York draft for $27,000. The draft is exhibit No. 296; I gave him a draft for $27,682.95.

Q. And then you paid the note of $10,000?

A. With interest, you know.

Q. And $63.30 interest? A. A. Yes.

Q. Which Cobban had made to Clark on the 31st of October, 1899?

Mr. BICKFORD.—Oh, no, oh, no.

A. He had made that note to the bank.

Q. I mean to Clark's bank?

A. Yes, sir, I paid that.

Q. That was $10,063.30? A. Yes, sir.

Q. And the balance was what?

A. I gave him $2,000 in cash, and later on I sent him $1,792.50. His acknowledgment is here, Exhibit No. 287. Those four items make up the amount of the note, $41,538.75.

Q. What is the third item?

A. $2,000 cash that I gave him, and then $1,792.50; that was the last item.

Q. And the item of $27,000? A. $27,682.95.

Q. That was in cash? A. That was the draft.

Q. The draft, yes. And this made the second loan that you made to Cobban? A. The first loan.

Q. The first loan that was secured by the timber?

A. Yes, sir.

Q. And you received how much timber for that?

(Testimony of A. H. Wethey.)

A. Fifty-five million odd feet.

Mr. BICKFORD.—That was as security for that loan?

The WITNESS.—The timber was security for the loan.

(By Mr. MAYNARD.)

Q. Now, then, had you up to this time, Mr. Wethey, read all the letters which you received from the defendant in this case which bear upon this matter?

A. I think I have read all of the letters pertaining to it; you can tell by the consecutive order in which they come.

Q. Have you any letters in your possession which relate to the matter at all, that you have not read?

A. Why, I would have to make a search to find that out.

Q. Do you now know of having some?

A. I think it is possible; I cannot say positively.

Q. Don't you now know that you have retained and kept back from the Senator's letters addressed to you, two or more letters?

A. Maybe I have, but I thought I had all the letters here in consecutive order that related to this matter, so if I have kept out any letters pertaining to this matter I have done so unintentionally.

Q. Without any intention to keep them back or under any instructions to keep them back? A. Yes, sir.

Q. But you do know of some letters that have not been read?

(Testimony of A. H. Wethey.)

A. I know that there are other letters of the Senator's in my files which I have not examined.

Q. Bearing on this subject?

A. No, I think not.

Q. Now, I would like to have you produce all of the correspondence that you had during this period between the defendant and yourself to-morrow morning or at the next opportunity; and furthermore, have you in your letter-books now before you, letters which you have not read and which you have not called my attention to, in any bearing upon this subject? A. I don't think so.

Q. You don't know of any?

A. I think, as we have come to them we have read them.

Q. You don't know of any? A. No.

Q. Are you prepared to say that the letters which you have read and which were brought out by my questions are all of the letters that there are on the subject?

A. I could not say that, because I have not examined the letters, to read them. I did not know what letters I would come to; I have not looked over the books.

Q. I wish, furthermore, that you would cause or make an examination of the letters in your letter-press book during this period, and that you produce all of the letters which you wrote to the Senator.

A. They are all here; all the letters I have written to the Senator are here.

Mr. BICKFORD.—I will state to the witness that the witness is not called upon to produce any letters except

(Testimony of A. H. Wethey.)

the letters that are especially called for by counsel, any letters that he wants.

Mr. MAYNARD.—The letters that I call for is the entire correspondence passed between yourself and the defendant.

A. The entire correspondence on my part during this period is all here.

Q. Of course, but there are four or five large letter copy-books? A. Yes.

Q. You would not care to have me go through all of them, all of this correspondence, to pick out the letters. I simply ask you to produce them?

A. Do you want me to tear them out of the book and bring them to you?

Q. I don't want you to mutilate your books.

A. All the letters, then, are in court.

Q. But I cannot find them in the book.

A. If you will call for them I will read them to you if it is necessary.

Q. I want to have you read all of them to me; I do not want to have you keep a portion of them back.

Mr. BICKFORD.—I want to state to counsel upon the other side that there seems to be an implied question in his attitude in this matter that he is not being treated fairly in this matter, and I want it distinctly understood now, that we regard it as much more important for the defendant in this case that these letters should be put in evidence than he can possibly deem it on behalf of the

(Testimony of A. H. Wethey.)

complainant, and that the efforts which I have made heretofore when not in court to ascertain about these letters has resulted in the bringing into court of all the letters that could be found bearing on this subject, as far as my investigation is concerned, and I know that Mr. Wethey has done the same.

Mr. MAYNARD.—Then, inasmuch as our minds on both sides are agreed, there ought not to be any difficulty whatever in having brought into court for examination all of the of the correspondence that was had between these parties.

Mr. BICKFORD.—What I object to is the intimation that is now thrown out by counsel, that he has not already got them.

Mr. MAYNARD.—I say I don't know whether I have or not. I am asking the witness, and it is impossible for me to ascertain that fact from the vast number of books that are now before him.

Mr. BICKFORD.—Well, go on with the cross-examination.

Q. Now, Mr. Wethey, after this money was paid on the security that you have mentioned, when did you next pay money to Mr. Cobban?

A. The next payment I made to Cobban was on the 15th of December.

Q. That was about a month after the payment that you have just referred to?

(Testimony of A. H. Wethey.)

A. After the taking of that note.

Q. Yes. Now, how did you come to pay that?

A. Because the Senator had accepted Mr. Cobban's proposal to pay the cash on the entire amount of timber that he had turned over by deeds before, and take the five per cent discount.

Q. Now, then, on the 5th of December the defendant writes, reading from page Copper c-33 of the record: "I note that Cobban is willing to extend the option and receive cash, less five per cent, for two weeks, which would be about the 15th inst." Have you the letter to which this is a reply? A. Yes, sir.

Q. Where is that? A. Right here.

Q. Will you please read that?

A. What is the date of his letter?

Q. The 5th of December.

A. My letter would be about the 1st of December, that I wrote. I have a letter of December 1st on the subject. Shall I read it?

Q. If you please?

A. "Butte, Montana, December 1st, 1899. Hon. W. A. Clark, Arlington Hotel, Washington, D. C. Dear Senator: Your favor of the 25th inst. is duly received, returning the agreement with Cobban to reconvey the land and timber on which you have loaned him 75c. per thousand on the standing timber. As the matter stands now, you have until February 1st next to decide whether you care to purchase the timber entirely by paying 50c. per thousand more for it, making $1.25 per thousand. Mr.

(Testimony of A. H. Wethey.)

Cobban made a proposal, that if you would pay cash he would make a discount of 5% from this price. I spoke to Mr. McLaughlin about it and he thought that perhaps Cobban would grant a larger discount than 5%, but Cobban tells me that 5% is the most he can do. He was here to-day and I asked him whether his cash proposal was still open or not. The agreement that you signed provided that you had until November 25th to decide whether you would pay cash or not. And I supposed that as you had not exercised your privilege you had lost it. He said, however, that if you should decide within the next two weeks to complete the purchase of the timber he would still allow the 5% discount. Respectfully yours,

A. H. WETHEY."

Q. Do you remember saying, Mr. Wethey, that the matter was not closed until the 18th of November?

A. Yes, sir.

Q. Now, then, on the 18th of November was it agreed and understood that the defendant was only to have one week thereafter to decide whether he would pay cash or not?

A. I don't remember how long a time, except what that letter states there.

Q. You say "the agreement that you signed?"

A. That agreement is in evidence as one of the exhibits.

Q. "—provided that you have until November 25th to decide whether you would pay cash or not"?

A. Here is the agreement. This agreement is dated

(Testimony of A. H. Wethey.)

the 18th of November, 1899, between W. A. Clark and R. M. Cobban, it is marked Exhibit No. 290, signed by William A. Clark. This agreement contains the following clause: "It is further agreed that if the said party of the first part shall pay to the second party on or before the 25th day of November, 1899, the sum of $24,230.95, and shall cancel and deliver up the said promissory note to the said second party, then and in that event the title conveyed by the two said conveyances aforesaid shall be and become absolute." You see that the amount mentioned provides for five per cent per discount. That agreement substantiates my testimony that there was no agreement before the 18th of November.

Q. Then, the payment was made for the land during the two weeks of the extension from the 25th of November, and you got the five per cent discount?

A. We got the five per cent discount.

Q. And now, then, how much money did you pay?

A. We paid on the 15th of December $24,230.95.

Q. In what form?

A. It is a draft by Cobban to the First National Bank of Butte, on us.

Q. And that paid for how much land?

A. That and the previous payment covered that fifty-five million feet of lumber.

Q. Now, then, what was the next tranaction?

A. The next transaction was an agreement made on the 27th day of January, 1900; the agreement is marked Exhibit No. 289.

(Testimony of A. H. Wethey.)

Q. Now, what negotiations had you had after the payment that you last referred to from the making of this agreement on the 27th of January?

A. I don't remember; I testified about it in chief.

Q. Well, I will call your attention to it. The next letter that counsel referred to is dated United Verde Copper Company, New York, January 22d, 1900, marked No. 14, page Cooper c-34 and 35, in which this letter says: "I have your valued favors of the 3d and 15th, and note the contents." I wish you would refer to your letter-book of January 3d and January 15th, 1900.

A. A letter to the Senator on the 15th of January?

Q. And the 3d of January.

A. I do not see any letter to the Senator on the 3d of January; probably it is the 13th and 15th.

Q. It is not possible that it should be the 3d and 15th of December?

A. I am looking for the 13th of January.

Mr. BICKFORD.—There is nothing on the 3d of January.

Mr. MAYNARD.—It is not possible that it was the 3d and 15th of December?

Mr. BICKFORD.—Oh, no, there was no letter written on the 3d.

The WITNESS.—I do not see any letter on the 3d nor on the 13th, about it. Here is my letter of the 15th of January to him. Shall I read it?

(Testimony of A. H. Wethey.)

Q. You cannot find the other?

A. No, I cannot find the other.

Mr. BICKFORD.—There is no other that refers to the matter.

Q. Please read that?

A. "Butte, Montana, January 15th, 1900. Hon. W. A. Clark, Arlington Annex, Washington, D. C. Dear Senator: Referring to the additional timber on which Mr. Cobban desired a loan in accordance with your agreement with him before you left Butte, I beg to say that I wrote Mr. McLaughlin that you had wired me you did not care to loan any more money on timber on the Blackfoot, and I enclose herewith his reply to my letter. Cobban was here Thursday and I told him I could not do anything further in the matter unless I should hear again from you. He said that if you cared to consider the matter further he would wait ten days or so until you had time to advise me further in regard to it. You will note that Mr. McLaughlin does not consider it possible to acquire much more timber on the Blackfoot. When O. J. McConnell was here with McLaughlin and we spoke to him about having acquired timber on the Blackfoot, he said it was a very wise step to have taken, and the more timber we had there the better, so that his views coincide with Mr. McLaughlin's on this point. The additional timber that Cobban has secured is twenty-two million six hundred and sixty-five thousand feet on deeded lands and on this timber you agreed to advance him 75¢ per thousand, which

(Testimony of A. H. Wethey.)

would be $16,998.75, and forty-nine million four hundred and two thousand feet on scrip lands, on which you agreed to loan him 50¢ per thousand, amounting to $24,701, or a total of $41,699.75, providing all the abstracts, etc., are approved by your attorneys. Respectfully yours,

A. H. WETHEY."

Q. This letter was written on the 15th of January to Mr. Clark and you say, "Referring to the additional timber on which M. Cobban desires a loan in accordance with your agreement with him before you left Butte." What agreement did you refer to?

A. That is the general understanding that he would loan Mr. Cobban seventy-five cents per thousand on the timber on deeded lands.

Q. Do I understand by that that there was no specific agreement in writing that you refer to?

A. There was no specfic agreement, no, sir.

Q. And the general understanding was then that you would take all the land that he offered on the Blackfoot at seventy-five cents a thousand down and fifty cents later?

A. Well, I had a general understanding that if he needed any further amount, that I would loan to him on that basis.

Q. Well, was that after the 15th of December, at the time that you saved the five per cent?

A. No, that arrangement was made in October; our correspondence in October covers that.

(Testimony of A. H. Wethey.)

Q. What do you mean by that?

A. These letters which were in evidence here this morning and which we were discussing; it was under that general agreement or general understanding contained in that correspondence that that loan came under. There as no other written agreement or understanding that I know of. I think it is dated the 13th of October.

Q. How does that differ from the one of November 18th? A. What? The agreement?

Q. Yes.

A. The agreement of November 18th is an agreement signed by the Senator, agreeing to reconvey this land and timber to Mr. Cobban.

Q. And the one of October 13th was that you would take all the land there was?

A. The one of October 13th was a proposal from Mr. Cobban offering—saying that he would need loans from time to time—or I don't remember the exact words—the letter is in evidence—and asking if Mr. Clark would advance seventy-five cents a thousand on it.

Q. That is all the agreement that you had?

A. That is all the agreement, yes, sir.

Q. That you call an agreement?

A. Well, it is really a proposal.

Q. A proposal that was never formally acted upon?

A. That is right.

Q. When did the Senator leave Butte for Washington?

(Testimony of A. H. Wethey.)

A. I cannot tell you exactly; I think it must have been in the latter part of November.

Q. Now, then, when you say: "Referring to the additional timber on which Mr. Cobban desired a loan in accordance with your agreement with him before you left Butte," now, do you wish to be understood as saying that when you dictated that: "in accordance with your agreement with him before you left Butte," that you referred to the unacted upon proposal of October 13th?

A. Yes, I simply put it in that way to recall to his mind the fact that we had that proposal from Cobban.

Q. And that proposal from Cobban you dignify into the expression "in accordance with your agreement with him before you left Butte"? A. Yes, sir.

Q. When did you receive the wire from the Senator that he did not care to loan any more money on the timber on the Blackfoot?

A. I don't know. Does not my letter state?

Q. No. You have not got that telegram, have you?

A. No, I have not. Is not there a letter, an exhibit, from W. A. Clark, a letter that would cover that?

Mr. BICKFORD.—If there is I don't know it.

The WITNESS.—I thought there was a letter in which he referred to the telegram and confirmed it. His telegrams are usually in cipher and I destroy them.

Q. Then these were loans of money secured by mortgages or deeds in the nature of mortgages?

A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. If you did not understand at the time that these conveyances which you now claim to be mortgages in fact, although deeds in form, were not absolute deeds and no mortgage, and that the title was absolutely in the defendant and that you were buying these timber lands, how was it that you used these words: "When O. J. McConnell was here with McLaughlin and we spoke to him about having acquired timber on the Blackfoot he said it was a very wise step to have taken and the more timber we had there the better"?

A. I think that was intended to encourage him to take more timber.

Q. That is, to buy more timber?

A. Yes, sir. I was giving Mr. McConnell's views, which corroborated Mr. McLauglin's views.

Q. That would mean, would it not, that you meant to encourage him to buy that land, and that the money which was advanced was for that purpose and not mere loans?

A. I think that would be going ahead a little too far. It was in the nature of encouraging him to make the loan to Mr. Cobban and having the option, to do as he pleased about it.

Q. Now, then, had not you, before you wrote this letter, had a conversation with Mr. Cobban in regard to the circumstances of his buying these timber lands, and had not he told you in that conversation what he was doing?

(Testimony of A. H. Wethey.)

A. I don't remember that he ever told me what he was doing.

Q. Never did?

A. I don't remember that he did.

Q. How were you able then in your letter of January 15th, to write these words: "The additional timber that Cobban has secured is twenty-two million six hundred and sixty-five thousand feet on deeded land"?

A. Yes.

Q. If you had no conversation with him, how did you find that out?

A. Because we had that distinction between deeded lands and scrip lands. I did not know the nature of the deeds, you understand, but he described them to me as so much timber on deeded lands and that is all I know about it.

Mr. BICKFORD.—You understood that it was land to which he had title?

The WITNESS.—Yes, sir.

The EXAMINER.—Mr. Maynard has the witness.

(By Mr. MAYNARD.)

Q. And do you wish to be understood that in all the talk that you had with Mr. Cobban from the beginning to the end of this entire transaction, when he was talking to you about deeded lands and how much he had acquired, that is all he told you, and you did not ask him any questions in regard to what he meant by deeded lands or anything of that kind?

(Testimony of A. H. Wethey.)

A. I don't remember ever to have asked him, no, sir; I can't remember that.

Q. And you did not know what he meant when he was talking to you about deeded lands or anything except that you distinguished it from scrip land?

A. That was the impression that I got, that it was deeded lands, and that therefore the title was better than the scrip lands.

Q. The Senator says: "I return Mr. McLaughlin's letter to you." Where is that letter?

A. I don't know.

Q. You did not destroy it, did you?

A. I don't know whether I did or not; I don't know what letter it refers to at all.

Q. I ask you if you will be kind enough to make a search in your office for that letter and produce it?

A. All right, sir.

Q. I don't see how you can remember these different things in your head.

A. I will make a note of it. A letter from McLaughlin to myself, isn't it?

Q. Yes, and referred to in a letter of the defendant of date January 22d, 1900. There are two or three others, you can perhaps remember better than I what they are, things that you said you would remember. I would not charge my head with those things if I had such a memory. I would not wear it out.

A. Well, it is a good thing to exercise it. I did not

(Testimony of A. H. Wethey.)

suppose you were going to give me a long list of them to remember.

Q. I have already referred to two or three different things.

A. Well, you asked me for letters and the letter-books.

Q. Perhaps you are assuming that I will forget all about these. Now, do you recall from your memory how much over the forty millions you originally bought, that you have bought by this time on the Blackfoot?

A. We bought about fifty-six million feet.

Q. Over the forty million? A. Yes.

Q. That was one hundred million, then, substantially? A. Yes, sir.

Q. Can you explain to me why, when forty millions was regarded as sufficient to protect yourself against the operations of the Big Blackfoot Milling Company, that as late as January 19th, McLaughlin was still asking the purchase of more timber for the purpose of heading them off?

Mr. BICKFORD.—We object to that for the reason that it is calling for a reason that must have existed in the mind of someone else, and not in the mind of the witness, and as not proper cross-examination in calling for any fact or statement of facts from the witness that is irrelevant to the inquiry.

A. My recollection is that McLaughlin told me that the Blackfoot people were acquiring more and more timber on the Nine Mile, and that he thought we there-

(Testimony of A. H. Wethey.)

fore ought to acquire more on the Blackfoot in the hope of some day making them an exchange.

Q. Well, if the idea of exchange seems to be thoroughly fixed in your memory, how was it that the Senator used the words: "I cannot understand why he should think we did not have sufficient timber on the Blackfoot to stand the other people off. If we can make them open their dam to let our logs through, that is all that is necessary, and I am sure the large amount we now have will be sufficient for that purpose"?

A. Well, the Senator had a different idea on the subject from McLaughlin, that was all.

Q. Well, the Senator had the idea of buying the timber for the purpose of standing the other people off?

A. Yes, sir.

Q. And McLaughlin had the idea of buying the timber for the purpose of an exchange? A. Yes, sir.

Q. Now, if that was so, how was it that in referring to Mr. McLaughlin's letter, and evidently quoting from it, the Senator says: "I cannot understand why McLaughlin should think that we did not have sufficient timber on the Big Blackfoot to stand the other people off"?

Mr. BICKFORD.—We object to this, for the reason that it does not appear, except from the statement of counsel, that there is any quotation in the letter from which he reads in asking the question, therefore, that the witness is called upon to answer an inference of

(Testimony of A. H. Wethey.)

counsel, rather than a statement of fact, and it is not proper cross-examination for that reason.

Mr. MAYNARD.—I would say that I am quoting verbatim from the letter from which I read to the witness.

Mr. BICKFORD.—You are not reading anything that is between quotation marks.

Mr. MAYNARD.—I am reading part of the Senator's letter.

Mr. BICKFORD.—Are you reading anything that is between quotation marks?

Mr. MAYNARD.—No, not in this copy here. I am reading the exact words, when he says: "I return Mr. McLaughlin's letter. I cannot understand why he should think that we did not have sufficient timber on the Big Blackfoot to stand the other people off."

The WITNESS.—I think probably the Senator's views differed from Mr. McLaughlin's.

Q. You do not think from this language that McLaughlin was telling him he ought to buy the timber for the purpose of standing the other people off?

Mr. BICKFORD.—Objected to as calling for a conclusion by the witness and not for a statement of facts.

A. (No answer.)

Q. I will ask you if there was any letter received by you from Senator Clark or written by you between the 22d day of January, 1900, and the making of that contract five days later, namely, on the 27th?

A. After the 22d of January?

(Testimony of A. H. Wethey.)

Q. Between the date of this letter to which I call attention, which was written in New York on the 22d of January, and the making of that contract on the 27th?

A. Here is a letter on the 26th to him.

Q. Well, by him or by you to him?

A. Yes, there is one from me to him on the 26th of January.

Q. Let us hear it?

A. "Butte, Montana, January 26th, 1900. Hon. W. A. Clark, The Arkington Annex, Washington, D. C. Dear Senator: Your favor of the 22d inst. is duly received. I note carefully what you say in regard to the timber on the Blackfoot and also in regard to advancing money to Cobban. Cobban was here this morning and I explained your position to him. I said that on account of your having purchased the timber upon which you made the first loan, you had practically put into the business all the money you had contemplated doing. I told him, however, that if he did not consider you had carried out the agreement, that you were willing to carry it out, but did not wish to make any additional contracts. From this expression and the tone of your letter I concluded that you desire to treat him with some consideration. After discussing the matter with Cobban for some little time he said that if I would make him a loan on the basis agreed upon by you on the timber on the deeded lands, only that it would be sufficient for his purpose. This is about

(Testimony of A. H. Wethey.)

twenty-six million feet, which, at 75 cents per thousand, will amount to in the neighborhood of $19,000 or $20,000; the exact figures I have not by me at the present time. This deeded land is undoubtedly good security for the loan, and you will have the option to purchase the timber just as you had in the first transaction. Mr. Cobban has about forty-nine million feet of scrip land, but it is agreed between us that you will not make any loan at all on any portion of this scrip timber.

I trust this arrangement will be satisfactory. Cobban is going to take all the deeds and abstracts to Corbett & Lee's office to-day, and as soon as they complete their examination and report, I will advance 75 cents per thousand as stated.

Respectfully yours,

A. H. WETHEY."

Q. Where is the letter of the 22d?

Mr. BICKFORD.—I introduced that in evidence on the direct examination; it is No. 14, and is found in the record. I have the letter itself here which you can look at.

Mr. MAYNARD.—Why, this is the one that I have got right here?

A. Well, that is the one you called for.

Mr. MAYNARD.—The 22d, yes, this is the one right here; it is on page Cooper, c-35.

Q. Will you please explain how, on the 26th of January, you wrote that: "As soon as they complete

(Testimony of A. H. Wethey.)

their examination and report I will advance 75 cents per thousand as stated, which would amount to some $19,000 or $20,000," when the Senator had written to you on the 22d that he did not desire to increase his purchases of timber"?

A. I did not pay any money to Mr. Cobban at that time, until the 11th of February, which gave me ample time to hear again from the Senator before I actually concluded the loan, and the letter was intended to convey that I would make the loan unless I heard from him to the contrary in the meantime.

Q. When did you hear from him?

A. I do not know. Is not the letter in evidence? I presume he answered my letter.

Whereupon, further hearing was adjourned until May 1st, 1902, at 10 A. M.

Monday, May 5th, 1902, 10 A. M.

Hearing resumed pursuant to adjournment.

A. H. WETHEY, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. During the several days that have elapsed since you were on the stand, Mr. Wethey, have you made an examination of the correspondence that I requested?

A. Yes, sir.

Q. Did you find it?

A. I found several letters, sir.

Q. Will you please produce them.

(Testimony of A. H. Wethey.)

A. My counsel has them.

Mr. BICKFORD.—I have them here, quite a number of them, and I am marking them now, making marginal markings so that the stuff that is material to the case in issue can be read readily?

Q. That is all that you were able to find?

A. Yes, sir.

Q. I call your attention to a letter of the defendant found on page Cooper, c-35, of the record, which is dated United Verde Copper Company, New York, January 22d, 1900, and directed to you. Have you this letter before you? A. No, sir.

Mr. BICKFORD.—I will find it in a moment. Here it is.

The WITNESS.—I have the letter, now, sir.

Q. Have you McLaughlin's letter that is therein referred to?

A. Yes, sir. Shall I read it?

Q. Please.

A. "Western Lumber Company Manufacturers of and dealers in rough and dressed lumber. Mining timbers a specialty. Orders promptly filled. St. Regis, Montana, January 13th, 1900. A. H. Wethey, Butte, Montana. Dear Sir: Your favor of the 10th inst., addressed to me at Missoula, was forwarded to me here. I note what you say about Senator Clark not wishing to purchase any more timber on the Blackfoot, as he thinks we have enough for the present. I am very

(Testimony of A. H. Wethey.)

sorry that Senator Clark feels that way, for I am afraid in six months time we won't be able to get more timber on the Blackfoot should we want it, and at the present time we have not got enough to make the opposition come to time should we want to. Mr. Cobban says that he has got all the timber that can be taken up there on patent or scrip, and if he don't sell to Mr. Cobban he must sell to the other people. The timber is small, but good clean timber and our estimator says the timber Mr. Cobban has scripped is very good and advises to get it by all means. The security for the loan on the scrip lands I am not familiar with, but it looks to me if Mr. Cobban would deed over the lieu lands or give power of attorney to you or Senator Clark to make selections elsewhere should any of the scrip lands be not approved by the Land Commissioner, it would secure the loan, but that is for Senator Clark to decide. I know I would like to have the timber.

Very truly yours,

H. W. McLAUGHLIN."

Q. Where is your letter-press copy of your letter to him of the 12th inst.?

A. My letter to McLaughlin?

Q. Yes.

A. Do you wish me to read it?

Q. If you please.

A. "Butte, Montana, January 10th, 1900. H. W. McLaughlin, Missoula. Dear Sir: Your favor of the

(Testimony of A. H. Wethey.)

9th of January received, enclosing list of lands and estimate of timber on the Blackfoot river, and I note the amount of timber on deeded lands is twenty-two million six hundred and sixty-five thousand feet, and the amount of timber in scrip land is forty-nine million four hundred and two thousand feet. I received a telegram from Senator Clark yesterday, stating that he did not care to loan any more money on Cobban timber as he thought we had enough for the present. I therefore wrote Mr. Cobban stating what Mr. Clark said, and, of course, I cannot make another loan to Mr. Cobban unless I should receive different instructions from Senator Clark. If you like to do so, you can write me a special letter on this subject, giving your views of the situation, which I can forward to Senator Clark for his consideration. With reference to the list of scrip lands, it appears that some of the selections were made this year. These, of course, have not been approved. I do not think it would be best to take any of the scrip land except it has been approved. What do you think about this? I notice that the logs are small and an average apparently of about ten logs to one thousand feet, or one 10x10 stick.

Respectfully yours,

A. H. WETHEY."

Q. Now, please, give me the letter of Mr. McLaughlin's that you refer to?

Mr. BICKFORD.—That is the letter that you have there.

(Testimony of A. H. Wethey.)

A. That is the letter which he wrote in response to my request.

Q. No, but the one that you refer to in your letter? A. Of the 9th?

Q. Yes. A. I haven't got it here.

Q. Will you send one of your men for it?

A. I haven't anybody to send for it, unless I go myself.

Mr. BICKFORD.—We object to the introduction of the letter of the 9th, which is asked for, because it is not proper cross-examination, and it is not necessary for the witness to produce that letter for that reason.

Mr. MAYNARD.—Well, I greatly prefer to take this matter up in the line that I have in mind, and I would like to have the letter of the 9th produced at this time.

A. Well, I cannot produce it. It is immaterial to the question, anyhow.

Mr. MAYNARD.—I asked for all the correspondence that had taken place between you and Senator Clark and Senator Clark and yourself and McLaughlin and Cobban during this period relating to this transaction.

A. I don't think you did, Mr. Maynard.

Mr. BICKFORD.—My understanding of the request of counsel was that the witness should produce the letter-books showing his letters to Senator Clark and produce the letters received by the witness from Senator Clark concerning this transaction.

(Testimony of A. H. Wethey.)

The WITNESS.—And I have those all here.

Mr. BICKFORD.—All of which he has produced and has here at the present time and is ready to submit to counsel for cross-examination, and no request was made for the correspondence with H. W. McLaughlin concerning this matter whatever, except the one letter which counsel now has in his possession.

Mr. MAYNARD.—Be that as it may, I now ask the witness to produce the letter to which this letter was a reply, namely, Mr. McLaughlin's letter of date January 9th, 1900.

Mr. WALSH.—Counsel for the defendant do not care to interrupt the cross-examination at this time to go and get it.

Mr. MAYNARD.—And all other letters that were received by Mr. Wethey from Mr. McLaughlin and from Mr. Cobban.

Mr. WALSH.—Besides it might as well be stated here that we do not recognize any obligation to produce anything here upon the oral suggestion of counsel during the course of the trial.

Mr. MAYNARD.—I understood that inasmuch as Mr. Wethey has the papers with him a few blocks from this room, and some of the papers have been produced on my oral demand, that I would not be required to formally and in writing make out a demand for this correspondence.

(Testimony of A. H. Wethey.)

Mr. WALSH.—We will cheerfully accede to every demand now but we do not feel that the course of the cross-examination ought to be interrupted every few minutes for the purpose of sending Mr. Wethey after papers.

Mr. MAYNARD.—It has never been done and never been asked for, and did not know of the existence of this letter until this minute. Now, what the Government desires is this, all the correspondence had between these parties during this entire time relating to this transaction. The defendant has seen fit to introduce certain correspondence in his possession, selecting such letters and such other documents as they have esteemed favorable to their side. All that the Government askes is that all the correspondence be produced in order that it may be determined as to just what the true facts of the case are. I understand that the witness himself says that he refuses or has neglected to produce this letter of Mr. McLaughlin's of January 9th, because he does not deem the same relevant to the issue.

Mr. WALSH.—The witness stated that he had not been asked to produce it.

Mr. BICKFORD.—We want to state further at this time that in producing the correspondence bearing on this case, the defendant has endeavored to produce all of the correspondence which is pertinent to the issues in this case, and has not desired either at this time or

(Testimony of A. H. Wethey.)

at any time during the progress of the case to secrete or withhold any of the correspondence which may be pertinent to the issues in this case, and at all times in the progress of the trial heretofore has expressed a willingness to produce any papers, letters or correspondence which would have a bearing either directly or indirectly upon the issues in this case, but have at the same time expressed a wish to withhold from the record irrelevant and immaterial letters and things which have no bearing upon the case and which have an important bearing upon other business transactions of the defendant, and such communications as could be considered private, confidential and privileged.

Mr. MAYNARD.—I will say in reply to my brother to this last objection, that as counsel for the Government I will cheerfully accede to this, and have heretofore stipulated with him that all matters contained in the correspondence relating to other subjects should be excluded from and not read into the record, and only so much of the correspondence that relates to the subject under investigation should be read into the record, and I am willing to continue that until the end.

Mr. WALSH.—It is enough now to say that we do not consent to interrupting the course of cross-examination to have Mr. Wethey run after papers as they may spring up in the course of the examination, and as counsel may deem them important. We are here to cross-examine Mr. Wethey.

(Testimony of A. H. Wethey.)

Mr. MAYNARD.—Now, if your Honor please, here is a letter which was the basis of this part of the examination, which has just been called to my attention, namely, the letter of January 9th, and I regard it as an important one and one which I would like to have now.

The EXAMINER.—I do not think it would be proper for me to stop the cross-examination of the witness that he should go to his office and produce the letter; if he produces it at 2 o'clock this afternoon, I think it would be sufficient.

Mr. MAYNARD.—Very well, if it is so understood, that the letter will be produced and such other letters as may be referred to at 2 o'clock, that will be satisfactory to me.

Q. You say in your letter of January 10th to Mr. McLaughlin, "I therefore wrote Mr. Cobban, stating what Senator Clark said. Of course I cannot make another loan to Mr. Cobban unless I should receive different instructions from Senator Clark." Did you receive different instructions from the defendant?

A. I got his letter of January 22d, which is in evidence, you know, in which he told me to notify him that he would carry out—

Q. What did you say?

A. Here is his letter of January 22d with additional instructions.

Q. This letter of the 22d is the only additional instructions that you received?

(Testimony of A. H. Wethey.)

A. I am not sure. I find I made the loan to Mr. Cobban on February 10th.

Q. Well, in this letter of instructions the defendant says: "In any event, as I stated, I do not desire now to increase my purchases of timber"?

A. Yes, in making that loan he did not necessarily increase his purchase of timber, because he might not avail himself of the option to purchase.

Q. Was that the distinction that you claimed to exist at the time? A. Yes, sir.

Q. If that is so, how do you explain the words in the next sentence: "I do not expect the arrangement with Cobban for advances to go on ad libitum"?

A. Well, advances was not making purchases, and in the last sentence in that same paragraph he says: "If Cobban sells to other people and pays off the loan I shall be satisfied."

Q. Is that the best explanantion you can give to my question? A. Yes, sir.

Q. With this letter before you, namely, defendant's letter of January 22d, how did you come to make the agreement of January 27th referred to on the page marked here defendant 2-d, Mac?

A. That agreement is one of the exhibits, I believe.

Mr. BICKFORD.—Yes, sir, it is in there, we have it here in the record; it is filed with the exhibits. If you would like to look at it I will show it to you in the record.

(Testimony of A. H. Wethey.)

The WITNESS.—The agreement dated January 27th, 1900, was signed by Cobban on that day, and sent by me to Senator Clark who was in New York, and who signed and returned the agreement and on February 10th I paid Cobban $19,957.50 in accordance with the terms of the agreement.

Q. Well, I asked you why you made an agreement on the 27th of January, when on the 22d of January you had received instructions from the defendant to the effect that he did not desire to increase his purchases of timber and he did not expect the arrangement with Cobban for advances to go on ad libitum.

A. I did not make any agreement.

Mr. BICKFORD.—I object to that for the reason that the witness has stated in answer to the prior question propounded by counsel that the agreement mentioned was not executed on that day by Senator Clark but was sent by R. M. Cobban to the witness as a proposed agreement to be thereafter entered into between Cobban and the defendant in this case, and the witness further answers that he forwarded the agreement to the defendant herein for his approbation or disapproval as the case might be, and that he did not pay any money on this agreement until the 10th day of February, 1900.

Q. Why did you forward the agreement that Cobban submitted after having received this letter of January 22d?

(Testimony of A. H. Wethey.)

A. I presume my letter is in the letter-book, giving my reasons at that time, but my recollection is—

Q. Just there, let us have that.

Mr. BICKFORD.—That letter, I think, is in the record and has already been read.

A. I see my letter in answer to Senator Clark's letter of January 22d is dated January 26th, and has already been read into the record.

Q. When do you say this agreement of date the 27th of January was signed by the defendant?

A. Why, I have not got the exact date; it must have been probably about the 1st of February.

Q. Have you any knowledge on that subject?

A. Only from what is before the Court here, the letters, etc.

Q. Now, I am reading from page Deft. d-2 Mac, the agreement as read by my brother Bickford: "This agreement made the 27th day of January, A. D. 1900, by and between W. A. Clark of Silver Bow County, Montana, party of the first part, and R. M. Cobban of Missoula County, Montana, party of the second part, witnesseth—" on the following page 3-d I read: "In witness whereof the said parties have hereunto set their hands and seals the day and year first above mentioned, signed R. M. Cobban, W. A. Clark."

A. Well, W. A. Clark was in the east and Mr. Cobban was out here, so they could not both have signed it on the same day.

(Testimony of A. H. Wethey.)

Q. But the record itself shows that it was signed on the same day.

Mr. WALSH.—Never mind answering that, Mr. Wethey.

The WITNESS.—Is that intended for a question, Mr. Maynard?

Mr. WALSH.—No, there is no question.

Q. Now then, was Cobban's signature affixed previous to its being sent on?

A. I think so.

Q. Why did you have him do that?

A. I guess he did it of his own free will; it was immaterial to me whether he affixed before or after.

Q. And with the uncertainty as to whether the Senator would take the additional timber or not?

A. It was. He was soliciting a loan, and he was making this proposition, and it was within the Senator's power to decline the loan if he had wished.

Q. But I gather from what you testify that you were anxious that the negotiations should be carried through and you did what you could to that end, did you not?

A. I perhaps was influenced by McLaughlin's representations, and wanted to do what I thought would be for the best interest of the Senator; it was immaterial to me; I had no interest personally in the matter.

Q. Well, this agreement of January 27th was consummated by its receiving the signature of the defendant?

A. Yes, sir.

(Testimony of A. H. Wethey.)

Q. And the lands therein named ultimately became vested in him? A. Yes, sir.

Q. And Mr. Cobban received the entire amount of the purchase price? A. Yes, sir.

Q. And that closed the transaction?

A. Yes, sir.

Q. Now, how many completed transactions were there up to this date?

A. There was a transaction covered by two deeds of July 29, 1899transaction covered by two deeds dated September 16, 1899, transaction covered by two deeds dated November 11th and November 13th, 1899, transaction covered by deeds dated January 9th and January 26th, 1900.

Q. That makes how many deeds?

A. Nine deeds.

Q. And how much timber was conveyed to the defendant by these nine deeds?

A. Approximately one hundred and thirty million feet.

Q. And the consideration paid?

Mr. WALSH.—Well, it was all at $1.25 a thousand, it is a mere matter of computation.

A. $152,493.75 is the amount I paid according to the checks issued, less the amount of five per cent discount on one transaction. I expect I have given the number of feet incorrectly. It is one hundred and

(Testimony of A. H. Wethey.)

twenty-one million feet, instead of approximately one hundred and thirty million,

Q. Well, there were some eighty million more feet purchased, were there not?

A. There was some timber purchased on scrip lands, and there was one more transaction with deeded lands in June; June 18th the money was paid for two million six hundred and sixty thousand feet of timber, amounting to $3,325.

Q. How did this deeded land come to be purchased?

Mr. BICKFORD.—We object to that because it is not proper cross-examination and relates to nothing that was brought out in the examination in chief and because it appears from his pleadings in the case that it is a transaction concerning which nothing is said in the bill of complaint.

The EXAMINER.—You can answer.

Mr. WALSH,—You do not care to go into that now, do you, Mr. Maynard?

The WITNESS,—I did not testify in chief on either of these transactions; I was not asked any questions in regard to this other matter.

Mr. MAYNARD,—Well, if your Honor please, now the objection of my brethren on the other side as made, can be answered in this way: that one of the entries at least that are claimed in the bill of complaint, namely, that of M. J. Ehle, lots 3 and 4 in the east half of the southwest quarter of section 18, township 16 north, of

(Testimony of A. H. Wethey.)

range 14 west comes from the land that was deeded in June, 1900 by Mr. Cobban to the defendant, and it will be admitted, I think, that as far as this entry is concerned, it would be competent to inquire into the circumstances by which the defendant obtained title to the land. My second point is that I think on cross-examination of the witness, it is entirely competent for me to show all of the dealings that were had between the defendant and Mr. Cobban which resulted in the purchase of lands by the defendant by Cobban, because it all has a tendency to explain the transaction which is now under investigation. They claim that the purchase of all these lands were made by the defendant under certain circumstances for the purpose of meeting the charges contained in the complainant,s bill of complaint, and they have selected from their correspondence such letters and other documents as to have a tendency in their opinion to sustain the position taken by them in their answer. Now, I desire, for the purpose simply of establishing the truth, to have all of the facts and circumstances of the case and all of the facts and circumstances which exist in this transaction, not only that which is claimed in the bill of complaint, but that which has a tendency to throw light upon it, inquired into; in other words, the witness says that in June, 1900, he obtained so much deeded land, and previous to that time he had received so much scrip land. Now, I want to know how they obtained that.

Mr. WALSH.—I perceive in the bill of complaint that

(Testimony of A. H. Wethey.)

Mary J. Ehle conveyed on the 15th of June, 1900 and although it is not proper cross-examination, we are content that the witness should be examined about the transaction of the 18th of June, 1900, but it might as well be understood now that the investigation of this matter is going to be closed with this transaction as far as that is concerned. Objection withdrawn as to the last question.

A. My recollection is that Cobban said that he had a little tract more of land containing about twenty-six hundred thousand feet of timber, and he would like to turn it over to us and close up the transaction, as if he disposed of that, he would have no further interest on the Blackfoot, and as it was only a small amount, my recollection is that I took it up on my own responsibility.

Q Have you any correspondence on the subject?

A. I have been looking to see if I could find any, but I do not find any.

Q. Have you any letter-press copies of your own letters on that subject?

A. No, sir, not here.

Q. Will you please produce them at 2 o'clock?

A. I will look for them, yes, sir.

Q. Were there no lands which you called deeded lands bought by the defendant from Cobban between January, 1900 and June, 1900?

A. No, sir.

(Testimony of A. H. Wethey.)

Q. How many purchases of scrip land had been made? A. Just one.

Q. And when was that?

Mr. BICKFORD,—We object to this as not proper cross-examination and as relating to nothing brought out in the examination in chief, and as irrelevant and immaterial.

Mr. MAYNARD.—Why all the way through the transaction he had been buying land from Cobban, which the witness has designated as scrip land.

Mr. WALSH.—Yes, but they had not—What purpose will it subserve whether Senator Clark did or did not buy some lands from Mr. Cobban that were acquired by scrip between January 28th and the 15th of June?

Mr. MAYNARD.—To show the continuous relationship between the defendant and Cobban.

Mr. WALSH.—As to that, what will the buying of scrip lands from him have to do with the questions involved in this case. Suppose we admit, now, that he bought ten thousand feet or ten million feet or one hundred million feet of timber from Cobban that was acquired by scrip, how would the situation be changed?

Mr. MAYNARD.—The whole question under issue in the case from the standpoint of the defendant is as to the bona fides of the defendant.

Mr. WALSH.—How is that affected as to whether or not he did or did not buy scrip lands; how is his bona fides affected by that?

(Testimony of A. H. Wethey.)

Mr. MAYNARD.—If we can show the intimate relations which existed between the two and the facts and circumstances under which Cobban was buying, and which facts and circumstances were communicated to the defendant, how would that effect it from your standpoint?

Mr. WALSH.—Suppose you prove that he bought one hundred million of scrip lands intervening these times, how does that help your case?

Mr. MAYNARD.—If you cannot see for yourself—the continuous transactions between the parties—

The EXAMINER.—Answer the question.

A. The money was paid for it on the 18th of June, 1900.

Q. How much was purchased?

Mr. BICKFORD.—The same objection to that question, that it is not proper cross-examination, and is immaterial and irrelevant.

A. Forty-nine million four hundred and two thousand feet.

Q. And how much was the amount?

Mr. BICKFORD.—The same objection.

A. $61,752.50.

Q. And do those two cash payments—

A. I have only given one cash payment.

Q. Didn't you give two cash payments?

Mr. BICKFORD.—We object to this; the witness has already answered what the payment was, and we object to

(Testimony of A. H. Wethey.)

the form of the interrogatory in that counsel puts the question as to two cash payments, when the witness has testified to one cash payment for the lands purchased, evidently endeavoring to mislead the witness as to what statement he has made before.

Mr. MAYNARD.—My sole and absolute purpose was simply to aid the witness; I thought he had fallen unintentionally into an error, that he had testified that he had made a small cash payment for what he called deeded lands, that was one, and this scrip would be another, and two ones would make two, and, therefore, when he said one, I thought I would like to treat the witness with absolute fairness and consideration, and ask him if he had not said two.

Q. I ask you now, if that is not so?

A. We did make two cash payments on that day; one was for $3,325, and the other was for $61,752.50.

Q. Now, then, do these two cash payments, added to the cash payments that you have just referred to a few moments ago make up the total of the payments made by the defendant to Cobban up to this time, June, 1900?

A. That closes the entire transaction; that closes all the transactions we had with Cobban, and we have not had any since that I know of.

Q. And just simply for my own information, so that it may appear there consecutively, how much does that aggregate in feet first, and then in payments?

A. Approximately one hundred and seventy million

(Testimony of A. H. Wethey.)

feet of timber, and the payment amounts to $217,571.25. It would be a little over one hundred and seventy million feet, but I have not got the exact figures.

Q. Was this last purchase of scrip land the result of loaning money by the defendant, or was it an original purchase?

Mr. BICKFORD.—Objected to for the reason that it is immaterial, irrelevant, and not responsive to any issue in the case, and not proper cross-examination.

A. It was a cash payment, but it was secured by a mortgage on some property of Cobban's in Missoula, so that in case the title to the scrip lands should not be obtained, the Senator would be secured in that way.

Q. When were the negotiations for this purchase first commenced?

Mr. BICKFORD.—The same objection.

A. Well, you will notice all through the correspondence that we talked of scrip lands.

Q. Yes, certainly.

A. I think that the matter came to a conclusion just at the time payment was made.

Q. In June? A. In June.

Q. What do you mean by that?

A. Well, as far as I knew, we had made no arrangement or come to no conclusion about taking up the scrip land, except the conclusion that I think has been mentioned in the letter from the Senator, that he did not want the scrip land. I am not quite sure now just what it was that

(Testimony of A. H. Wethey.)

decided the Senator to buy the scrip lands from him; I think, perhaps, the fact that Cobban offered a mortgage on the real estate in Missoula City was some inducement to the Senator.

Q. You must have a considerable correspondence on the subject, haven't you?

A. I don't know; I haven't looked up that matter at all, and I have been looking over the letter-books here, and I do not find anything in regard to it.

Q. Well, would that be in these letter-books?

A. That might be, I don't know.

Q. Over what period does your last letter-book there go?

A. My last letter-book here goes up to May 26th, and up to that time I do not find anything.

Q. Not a single letter written by you either to the defendant or to Cobban or McLaughlin relative to this sixty million feet of timber?

A. Forty-nine million feet. I was looking through my letters to the Senator, and as far as I have examined I do not see any reference to this matter; from April 12th to May 26th, 1900, when this book was in use, I wrote no letters at all to Cobban.

Q. From January, 1900, up to June, 1900, was the defendant here in Butte?

A. No, sir, he was in the east.

Q. Well, he was home, was he not?

A. I hardly think so; I think all the correspondence that has been submitted shows that he was away in the

(Testimony of A. H. Wethey.)

east at that time. He was in Washington in April, and he was in Washington in February; I don't think he had been home since the fall.

Mr. BICKFORD.—I know as a matter of fact that he left in November and did not return until the latter part of June, 1900.

The WITNESS.—I think he came in July, 1900, though I am not sure.

Q. Well, Mr. Wethey, if the defendant was not home from January, 1900, to June, 1900, and some forty-three million feet of timber was purchased by him from Colban, how do you account for the fact that there is no correspondence in existence on the subject?

Mr. BICKFORD.—I will just notify you, Mr. Wethey, now that you are not obliged to account for that fact.

A. I thought I had already accounted for it. My letter-books only go to the 26th of May.

Mr. BICKFORD.—You are not compelled to account for the fact at all.

Q. You say that your letter-books—

A. The letter-books that I have in court here only go to the 26th of May.

Q. And the purchase was made when?

A. The 18th of June.

Q. That is twenty-two days? A. Yes, sir.

Q. Was this money all paid at once?

A. Yes, sir.

Q. By whom? A. By me.

(Testimony of A. H. Wethey.)

Q. And you paid $61,000 all at once?

A. Yes, sir, that was one check.

Q. Have you that check here?

A. No, sir; I have got the receipt from the First National Bank of Butte for both checks.

Q. Now, Mr. Wethey—

A. I was not able to produce the checks themselves, and so I brought the receipts.

Mr. MAYNARD.—Please have them marked for identification.

The EXAMINER.—One will be marked Exhibit No. 311 and the other 312.

Mr. BICKFORD.—We object to all of these as not being relevant or material and not being proper cross-examination and as not tending to prove or disprove any issue in the case, being concerning a transaction which is not complained of or mentioned in the complaint and concerning which the answer says nothing.

A. I was not examined in chief on those, either.

Mr. BICKFORD.—And as being concerning something that was not brought out in the examination in chief.

The EXAMINER.—These will be complainant's exhibits, not defendant's.

Mr. BICKFORD.—Yes, sir. they are not our exhibits at all.

Mr. MAYNARD.—I desire leave to read into the record Complainant's Exhibit No. 311: "The First National

(Testimony of A. H. Wethey.)

Bank of Butte, Montana, May 1st, 1902. Mr. Arthur H. Wethey, City, Dear Sir: I have examined the deposit slip of the First National Bank of Butte for June 18th, 1900, and find that Mr. R. M. Cobban deposited on that date a check to the amount of $3,325, which was duly passed to his credit on the books of the said bank. Yours truly, Andrew J. Davis, President." Also Complainant's Exhibit No. 312: "First National Bank of Butte, Montana, May 1st, 1902. Mr. Arthur H. Wethey, City, Dear Sir: I have examined the deposit slip of the First National Bank of Butte for June 18th, 1900, and find that Mr. R. M. Cobban deposited on that date a check to the amount of $61,752.50, which was duly passed to his credit on the books of the said bank. Yours truly, Andrew J. Davis, President."

Q. You have personal knowledge of the facts that the amounts referred to in these exhibits were checks which you had given Mr. Cobban? A. Yes, sir.

Q. In the purchase of the lands that you have named?

A. Yes, sir.

Q. Will you kindly, Mr. Wethey, explain to me by what authority you bought these lands?

Mr. BICKFORD.—We object to that as being irrelevant and immaterial and not proper cross-examination, for the reason that no evidence was introduced on the examination of this witness in chief concerning the transaction spoken of.

A. I was instructed to do so by the defendant.

Q. When?

(Testimony of A. H. Wethey.)

A. About the time that the deal was made; I could not give you the exact date.

Q. In what way? A. I presume by mail.

Q. You mean by a letter received through the mail?

A. I think so.

Q. Have you that letter with you now?

A. I don't know whether I have or not; I didn't look up any of the data in regard to the purchase of these scrip lands.

Q. Would you be willing to see whether you have it here now?

Mr. BICKFORD.—We shall object.

Mr. WALSH.—Understand whether it is here or whether it is not, you cannot have it.

Mr. BICKFORD.—We object to the witness producing it.

Mr. WALSH.—We positively refuse to permit the counsel to go into the subject at all, deeming it absolutely immaterial, and we will state now that we will not produce any correspondence in reference to the purchase of the scrip lands, simply because we deem it to be utterly irrelevant to this inquiry.

Mr. MAYNARD.—Simply for the reason that the Government regards it as absolutely material and relevant to the issues raised in this inquiry, we shall have this correspondence if there is any power in the courts of the United States to produce it.

(Testimony of A. H. Wethey.)

Mr. WALSH.—We will be very glad to have you to appeal to the power of the Courts any time you care to.

Mr. BICKFORD.—And we will notify the gentleman now, that he will have to apply to the Court and the power of the Court to get these letters or any of them relating to this scrip transaction.

Q. Do you refuse to produce this correspondence of your own motion, Mr. Wethey?

Mr. WALSH.—No, the counsel for the defendant states to the counsel for the Government that they will not permit the witness to produce it.

Mr. MAYNARD.—I now ask the Examiner to direct the witness to answer the question.

The EXAMINER.—The witness should answer the question as I view it; there should be some answer.

A. As far as I am concerned personally, I have no objection whatever to producing all the correspondence, because I know that there is nothing in the correspondence that needs to be concealed; that the entire business was carried on in a legitimate way and there is no necessity on our part for attempting to conceal anything. In this matter I am governed, of course, by counsel for the defendant, and I am in their hands.

Q. I ask you now to produce the letter which you have referred to, namely, the letter that you received from the defendant instructing you, as you state, to purchase this timber.

(Testimony of A. H. Wethey.)

A. I will have to make a search for that letter, because I do not know where it is.

Mr. MAYNARD.—If your Honor please, I cannot very well—my examination of the witness will be very short, and I cannot very well continue until we close up this matter one way or the other. I want to have it decided fully as far as this tribunal is concerned, as to whether I am to go into this branch of the case or not.

Mr. WALSH.—There is no use waiting for this matter, because you have got to get an order from the Court before you get this.

Mr. MAYNARD.—I want to get the record straight here and get a ruling of the Examiner, so I will have something to appeal from or know where I am, and whether the witness refuses under the instructions of the Examiner that he should answer, or that he refuses to answer under instructions from his counsel; I want to have the record show that, and then I will have some foundation to go to the Court on.

The WITNESS.—I have answered all the questions that you have asked me.

Q. You said that you did not have the letter and you did not know whether you could find it or not, and that you would have to make a search for it?

A. That is true.

Q. Well, I want to wait till 2 o'clock and see if you can find it.

Mr. WALSH.—Counsel for the defendant has said

(Testimony of A. H. Wethey.)

that they will not permit the witness to produce the letter, so it will not be here at 2 o'clock.

Mr. MAYNARD.—Well, what I want then is to have the direction of the Examiner on record; as I understand it, he has never, up to this point, said the question should be answered by the witnes. Now, I want to have that letter produced, or I want to have the Examiner say that it shall be produced, and if they refuse to produce it, to have that appear of record.

The EXAMINER.—Before the matter goes any further, I will simply state that under the statutes of this State it will be necessary for you to make a formal notice in writing to the parties to produce whatever letters or correspondence or other documents you require before I could take any action in reference to it.

Mr. MAYNARD.—I know very well, if your Honor please, that that is so, but my brethren on the other side have waived, as far as I understand it, the technical point in regard to the production of testimony, and have come on the broader platform of assuming that a written demand had been made, that then they would refuse to produce the letter, and that the question under the stipulation could be decided by the Court the same as if a written demand had been made.

The EXAMINER.—They have not formally made any waiver of that character.

Mr. MAYNARD.—I ask the counsel now as to whether or not they will insist on the technical appli-

(Testimony of A. H. Wethey.)

cation of the rule that a written demand should be made, or whether by stipulation it may be made to appear that that is waived, and that the broader proposition may be considered.

Mr. WALSH.—We are perfectly willing that the Master should right now pass upon the question as to your right upon this cross-examination of this witness to produce in evidence or compel us to furnish you correspondence between himself and Senator Clark concerning the purchase of these scrip lands, concerning which nothing is mentioned in the complaint at all, and that so far as I am able to enlighten the Court, has no sort of tendency to throw any light whatever upon the matter under inquiry. We are perfectly willing to waive any matter of formal written notice, and submit the question to the Master now as to whether at this time you have any right at all to make Mr. Wethey go and get this correspondence concerning the purchase of some scrip land, and I say it now, that this objection is made by us just simply because Mr. Wethey has been on the witness stand now for something like four days of cross-examination, a cross-examination that ought to have been completed in three hours at the very outside. He has been inquired of about a whole lot of matters that have not the remotest sort of reference to any controversy here at all, and this is a flagrant passage from anything like the domain of this examination, so that we are perfectly willing to submit the matter.

(Testimony of A. H. Wethey.)

Mr. MAYNARD.—I have no doubt whatever that my brother on the other side is entirely competent to make the criticism that he has, notwithstanding the fact that he has not been here but was in Helena during the greater part of the time, and I believe has had no time since or opportunity whatever to read the examination that has been had.

Mr. WALSH.—You are in error about that; I took the precaution to acquaint myself fully with it, and read it from beginning to end.

Mr. MAYNARD.—If you have, then of course it becomes a question for the Courts hereafter to determine as to the effect of the cross-examination. Now, the point that I make is this: Mr. Wethey has already testified, if your Honor please, just lately, of his own motion, that it would appear that running through the correspondence which they have offered themselves, there were these negotiations pending for the purchase of this scrip land, creating an impression that the purchase of this forty odd million feet was the culmination of these negotiations. They claim that they knew absolutely nothing about any of the facts and circumstances connected with the purchase of any of this timber that was bought by the defendant from Mr. Cobban. We claim that they knew all about it, and for the purpose of throwing light upon that issue of fact, we desire, not only the beginning of the negotiations which Mr. Wethey says was referred to in the correspondence which they have offered, but the mid-

(Testimony of A. H. Wethey.)

dle of it and at the end of it, and if it is not simply elementary, rudimentary, that on that issue we are entitled on cross-examination to that evidence, then I am very, very much mistaken, and therefor I submit, if your Honor please, that we are entitled to the production of this letter.

Mr. BICKFORD.—Just one word, your Honor, with reference to the remarks of the gentleman who has just finished, and that is this: In the course of this examination we have endeavored to aid in every way within our power to produce all the testimony that was within our possession bearing directly or indirectly upon the issues in this case. At times we have felt that it was perhaps better, that it would expedite this hearing to allow a great many things to go into the record that have no place there, in order to expedite this hearing, to finish the investigation and the taking of testimony. We have at all times thrown our records open to the gentleman upon the other side for the purpose of finding out any facts contained in our records or correspondence which bore either directly or indirectly upon the questions at issue in this case. No matter what the theory of the Government may be with reference to the knowledge possessed by the defendants in this case with reference to these transactions, I am compelled to say that the Government is in an exceedingly unfortunate situation with reference to its growth with reference to the theory that the gentleman has paraded before our eyes for

(Testimony of A. H. Wethey.)

the past four or five months. At this time if he has a theory with reference to the entries made under the Timber and Stone Act, he has been equally unfortunate in putting none of this theory in the complaint in this case. Therefore the evidence called for is immaterial, irrelevant and irresponsive to any issue in the case, and no matter whether he referred to rudimentary law or rudimentary rules, it still remains a fact that the gentleman has no right to this testimony under the pleadings in the case or under the issues as framed before the Court, and we feel that we are assuming the proper attitude, the legal attitude and the lawful attitude, and one which will be upheld by the Court, when we object to the introduction of this irrelevant and immaterial testimony. Now, I do not care to argue the case at this time or to go into any extended argument as to the admissibility of the testimony, but we feel that notwithstanding the fact that the great Government of the United States is prosecuting this case, that a mere individual, one of seventy-five or eighty millions, has some rights under the law which should be respected. We make this objection in good faith.

Mr. WALSH.—I want to say just a word, if your Honor please. It is not a matter of a consideration of the production of documents before a trial so that a party may be advised concerning the evidence which is in the hands of the other party under an application for the purpose of inspecting or producing documents or anything of that kind. This is a matter that comes

(Testimony of A. H. Wethey.)

up in the course of the cross-examination of the witness upon the stand. The witness was asked to produce all the correspondence in his possession between himself and Senator Clark touching the matters that are referred to in the bill of complaint. He has done that; it is conceded that he has done that; there is no controversy about that. Now, he is asked, if the Court please, as part of his cross-examination to produce some correspondence that has not anything to do at all confessedly with any of the matters referred to in the bill of complaint, but that touches the purchase of some entirely different land by Senator Clark from Mr. Cobban. That is the question that is before the Court, and the theories of the Government or the theories of the defendant have absolutely nothing to do with the case. It is not either a question of what scope might be given to an order made before the trial of an action upon the defendant to produce documents in his possession that may or may not have something to do with the action; it is a question of what the limits of a cross-examination are, and that is all.

The EXAMINER.—At the present time I am not willing to certify that in my opinion that the witness is required to produce the letters of the defendant concerning the purchase of the land described as scrip land of R. M. Cobban in June, 1900.

Mr. MAYNARD.—I take an exception to the ruling of the Examiner and shall appeal therefrom at the first opportunity.

(Testimony of A. H. Wethey.)

Whereupon further hearing was adjourned until 2 o'clock P. M.

Monday, May 5th, 1902, two o'clock P. M.

Hearing resumed pursuant to adjournment.

A. H. WETHEY, recalled for further cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Wethey, since we adjourned this forenoon, have you been able to find the letter of January the 9th, of Mr. McLaughlin, addressed to yourself?

A. No, sir.

Q. Have you hunted for it?

A. Yes, sir, I made a diligent search for the letter you asked me for, but I did not come across it.

Q. There is one regular place for it, is there not?

A. And it ought to be in the letter-file for that time.

Q. And it isn't there? A. No, sir.

Q. And you don't know where it is?

A. No, sir.

Q. When did you last see it?

A. Not since it passed through my hands at that time.

Q. Do you know of any reason why it should be missing?

A. No, sir, I presumed it was an unimportant letter and that there was no particular value placed on it.

Q. I would like that letter-book that you had this morning here.

(Testimony of A. H. Wethey.)

A. Containing my letter of January the 10th?

Q. I think so? A. Here it is.

Q. In your letter of January the 10th, 1900, to Mr. McLaughlin, you say in reference to the list of scrip lands, "It appears that some of the selections were made this year. These, of course, have not been approved, and I don't think it would be best to take any of the scrip land except what has been approved." From whom did you ascertain that fact?

By Mr. BICKFORD.—We object to that for the reason that there is no fact that has been obtained from the witness in the progress of the trial to a matter not brought out on the direct examination, and it is therefore irrelevant and immaterial.

A. I don't know how I came to know that.

Q. In a letter written to you by Mr. Bickford, on the 31st day of July, 1899, he says, "I send you enclosed herewith copy of a letter which I have just written to Mr. W. A. Clark, with reference to the land examined by William Sparks." Do you remember receiving that letter?

A. Yes, sir, and I think that the letter is marked as an exhibit in this case. I think I put it in in my evidence in chief.

By Mr. MAYNARD.—Did he?

By Mr. BICKFORD.—Yes.

Q. Now, then, you say that since June, 1900, the

(Testimony of A. H. Wethey.)

defendant has had no business dealings with Mr. Cobban to your knowledge? A. Yes, sir.

Q. What did you say? A. Yes, sir.

Q. And you have stated all the business that was had relative to the purchase of timber, between the time of the first transaction until its close?

A. Yes, sir.

Q. Do you think that you will be able to find this letter of January the 9th?

A. I don't know where else to look for it; I am sorry we didn't come across it, because I would like to have given it to you, since you ask for it.

Q. Well, I wish that you would try and find it, Mr. Wethey. Pending that, I will suspend the further examination of the witness.

Redirect Examination.

(By Mr. BICKFORD.)

Q. In your cross-examination, Mr. Wethey, you introduced and gave in evidence certain checks by McLaughlin, dated July 29th, 30th and 31st. They were marked Exhibits Nos. 305, 306 and 307, and you testified that those checks were given in part payment for the lands that were deeded on July 29th, 1899, from R. M. Cobban to W. A. Clark. I will ask you to state, if you please, how it happened that there were three checks given to close the one transaction?

A. I presume because McLaughlin had your letter of instructions telling him to pay the money after the deals were completed.

(Testimony of A. H. Wethey.)

Q. And the checks were given only as the title to the land was shown to be perfect in the grantor?

A. Yes, sir.

Q. Now, at the time these checks were given, it was in payment for the land mentioned in the deeds dated July 29th, 1899, was it not? A. Yes, sir.

Q. Had you then given Mr. McLaughlin any instructions with reference to the payment of the money?

A. No, sir.

Q. Then the instructions to McLaughlin were contained in the letter which I wrote, and which has been read into the record here? A. Yes, sir.

Q. Now, I will ask you to state whether at the time when this first transaction was completed, on July 29th, 1899, there were any other transactions in contemplation?

A. Not to my knowledge.

Q. When was it that the next transaction, concerning the purchase of timber lands was brought to your attention?

A. The next deeds were dated in September, but that was part of the previous purchase.

Q. Part of the original purchase?

A. Yes, sir, I think so.

Q. Well, now—the 40,000,000 feet, how much was included in the first two deeds?

A. A little over ten millions.

Q. And the subsequent deed was for—

A. Enough to make up forty million.

Q. Now, the entire number of feet was forty million?

(Testimony of A. H. Wethey.)

A. Yes, sir.

Q. At the time when this deed from—on July 29th, was made, didn't that close the transaction so far as that was concerned, or was there an agreement that an additional amount of timber would be purchased subsequent to that?

A. I think that the payment in July closed up that transaction as far as it went.

Q. Well, wasn't that a separate and distinct transaction, and isn't it a fact that there was no agreement on July—no agreement at the time, to take any other land whatever?

By Mr. MAYNARD.—I object to the form of the question now about to be asked the witness, for the reason that it is not redirect examination, and it is leading the defendant's own witness.

A. Well, I cannot say definitely about that.

Q. Well, have you any knowledge of any contract or agreement to buy or purchase lands upon behalf of Senator Clark, except those contracts or agreements which are contained in the letters which you have read here, and which are now a part of the record?

A. No, I don't know of any.

Q. You know of no other contracts or agreements?

A. No, sir, everything we have in connection with the matter has been submitted.

Q. Yes. Now, in view of those letters, what have you to say as to there being any continuing contract or any contract with reference to any other land, or any other

(Testimony of A. H. Wethey.)

agreement with reference to any other lands than those mentioned in the deeds dated July, September, November, and so on to the end?

By Mr. MAYNARD.—I object to that question as absolutely incompetent, and for the further reason that it is leading, and further that the question calls for a conclusion of the witness from the letters that he has offered here in evidence, submitting—asking for his opinion as to what the effect of those letters is, and asking his opinion thereon. For that reason it is entirely incompetent.

A. There was no continuing contract at all; Mr. Cobban was acting entirely on his own volition in this matter; he wasn't engaged or employed by us in any way to get timber, and what timber he had, he had no knowledge whatever that he would make a sale of it to us, and we had no knowledge that we would buy until the time came.

Q. And then at the time when the deed in September was made, September 16th, I think is the date—of the deed, was that a distinct and separate transaction than those of July 29th, 1899?

By Mr. MAYNARD.—I object to that question as absolutely incompetent, and not proper redirect examination.

A. It was a separate transaction of itself.

By Mr. MAYNARD.—We move to strike out the answer of the witness, upon the ground that the question itself is leading and suggests to the witness an answer to the question, and further it is not proper redirect examination.

(Testimony of A. H. Wethey.)

Q. Now, with reference to the question of the subsequent transactions, after the 16th of September, 1899, I will ask you to state what the date of the purchase was with reference to the date when the deeds themselves were signed?

A. The deeds were dated November 11th and November 13th, and the money was paid November 17th.

Q. Was the money paid on November 17th, the purchase price of the land, or was that loaned by the defendant herein to R. M. Cobban?

A. It was a loan.

Q. When, as a fact, was the purchase actually made?

A. The purchase was actually made on the 15th of December, that is, the completed price to make up the difference between the value of the timber and the amount advanced as a loan.

Q. Now, I will ask you to state with reference to the next transaction; when was the date of the next transaction?

A. The next payment I made to Cobban was on February 10th, 1900, a loan on account of the 26,610,000 feet of timber; that was covered by a mortgage dated January 27th, 1900.

Q. The deed was dated January 27th, 1900?

A. No, I say the agreement was dated. There were three deeds, two of them were dated January the 9th, 1900, and one was dated January 26th, 1900.

Q. Now, with reference to those deeds, and that trans-

(Testimony of A. H. Wethey.)

action, when a loan was made to Mr. Cobban, when was it that the land was actually purchased?

A. April 30th, 1900.

Q. That is, between the time when the deed was drawn and when it was delivered?

By Mr. MAYNARD.—Was that scrip land?

A. No, sir, that was land covered by an agreement of January 27th. We had it this morning.

By Mr. BICKFORD.—Now, I will ask you to state what was the condition of the land with reference to ownership, between the date when the loan was made and the time when the purchase price was paid, and who was the actual owner of the land between those times?

By Mr. MAYNARD.—We object to that because the deeds are the best evidence of the fact, as well as the contracts and agreements that have been offered in evidence in the case, and calls for simply an opinion of the witness based upon said agreement, and further for the reason that the witness is incompetent to express an opinion.

By Mr. BICKFORD.—Well, just for the sake of having peace in the family, I will withdraw that question.

Q. Now, I will state with reference to there being any general agreement made by Senator Clark to loan Cobban money. What have you to say with reference to there being a general agreement of that kind?

By Mr. MAYNARD.—We object to that for the reason it is not proper redirect examination, and the witness has already been interrogated about the matter, and has been

(Testimony of A. H. Wethey.)

examined by counsel fully, and for that reason it is incompetent, irrelevant and immaterial.

Q. You can go ahead and state, Mr. Wethey.

A. I don't know—I don't remember of any general agreement other than is shown by the letters that have been submitted in this case.

Q. Well, do you know of any other agreement except those that are mentioned in the letter?

A. No, sir; there were no others except what were mentioned in the letter.

Q. The land, as I remember your statement, was purchased between the 29th day of July, 1899, and some time in January, 1900. Those lands have been taxed since that time to Senator Clark, have they not, all of them?

A. I don't know, I never compared the tax lists; I know we did pay several thousand dollars for taxes, but i don't know just what land it covers.

Q. In what year was it that you paid the taxes?

A. Paid the taxes last year. There was some taxes in 1901 and some in 1900.

Q. Well, the taxes were paid on lands in the Blackfoot country?

A. Yes, sir, those are the lands that I speak of.

Q. You spoke of the taxes that were paid on lands owned by Senator Clark in the Blackfoot country?

A. Yes, sir.

Q. And does he own any other lands in the Blackfoot country than those which were purchased of Mr. Cobban?

A. No, sir.

(Testimony of A. H. Wethey.)

Q. I believe you testified this forenoon that at the time when there was a loan made on the scrip lands, that you took a mortgage on other property as security for this, in addition to the scrip lands? A. Yes, sir.

Q. I wish you would state why you did that.

A. In order to provide for additional security for the amount paid for the scrip lands.

Q. Then you regarded the security—the scrip land as insufficient security for the amount of money that was loaned upon the scrip lands, as I understand you?

A. Yes, sir.

Q. In other words, you had a doubt as to the validity of the title to the scrip land? A. Yes, sir.

Q. But you had no doubt as to the title of the other lands? A. No, sir.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Wethey, Mr. Bickford in his letter to you of July 31st, 1899, says: "I send you enclosed herewith copy of a letter which I have just written to Mr. McLaughlin, with reference to the examination of the lands made by William Sparks." Did you have any acquaintance with Mr. Sparks?

A. No, sir, I never met him until a few days ago.

Q. When did you meet him—where did you meet him?

A. I was in Missoula last Saturday.

Q. When?

A. Last Saturday, and he called to see me.

(Testimony of A. H. Wethey.)

Q. Did you have a conversation with him in regard to his connection with this case? A. No, sir

Q. What is that?

A. No, sir; I didn't speak to him of the case.

Q. There was nothing said about it? A. No, sir.

Q. Well, when Mr. Bickford wrote to you about the land and the examination made by Mr. Sparks, did you know that he was employed for that purpose?

A. Only from hearsay; I didn't know him.

Q. Who had told you about it?

A. Mr. McLaughlin.

Q. What was Sparks doing?

A. I understood that his business was that of an estimator of timber.

Q. Well, you knew that he was working for Mr. McLaughlin, did you not, at the time, from what McLaughlin told you?

A. Well, I supposed from what McLaughlin told me that he was employed by him, or that he was going to employ him, I don't remember which it was.

Q. You knew the character of his employment, did you not? A. Only in a very general way.

Q. That he was estimating timber that was being selected by Mr. Cobban?

A. No, I knew in this way, that timber that we would buy from Cobban was to be examined and inspected before we paid the money for it, and that Sparks was assisting Mr. McLaughlin in doing that.

(Testimony of A. H. Wethey.)

Q. In measuring and estimating the quantity and value of the timber that Cobban had to sell?

A. Yes, sir.

Q. Was Sparks paid by Mr. McLaughlin directly or by you? A. He was paid by McLaughlin.

Q. You had no conversation and no correspondence with Mr. Sparks?

A. No, sir, I couldn't say that I did.

Q. And as I understand your answer to my brother Bickford, that after the first July purchases, all the rest was done by Cobban on his own motion, and it was an open question as to whether anything would be done by the defendant, either by way of a purchase or a loan, until it was actually accomplished? A. Yes, sir.

Q. And that you did not know when Mr. Clark, the defendant in this case—nor did Mr. Clark know, that Mr. Cobban was continually engaged there, in selecting timber to be delivered over to you?

A. No, sir, we had no knowledge of what Mr. Cobban was doing.

Q. And after one transaction was closed, you had no knowledge or idea that he was getting ready to negotiate another sale with you, or to secure money, until he came with the proposition itself?

A. That was the way, yes, sir.

Q. Now, is it not a matter of fact that under the authorization of the purchase of forty million feet in the first instance, for the purpose of blocking the opposition

(Testimony of A. H. Wethey.)

on the Blackfoot river, that the defendant knew that Mr. Cobban was operating in that country and buying timber lands, and that he notified you substantially that while he had purchased what he deemed necessary for the purpose indicated, that if Cobban was in a position to offer you what might be regarded as a choice piece of timber, that you would buy it?

A. Cobban was acting entirely for himself, and we had no knowledge of what his operations were, but we didn't know that we would buy any more until the question came up, and he presented it to us; and then, I think the Senator said, in one of his letters, that he didn't think it would be well to buy any more unless he had some special choice timber to offer, but we were not keeping track of what Mr. Cobban was doing. As I said before, he wasn't acting for us in any way in looking for timber; he was simply carrying on a real estate business, and apparently that was one branch of his business, and buying and selling timber and real estate was also part of his business, when he could make a profit at it. We knew he was searching for real estate and was securing it, but he had no knowledge as to who would be a purchaser. He always intimated to me that parties back east were his principals. He had parties in Wisconsin who were anxious to buy timber in that section of the country, and own, I believe, several tracts of timber land up there now.

Q. Well, don't you know that the Senator was being urged at times by his representative, Mr. McLaughlin,

(Testimony of A. H. Wethey.)

to secure this timber, and that McLaughlin was corresponding with him in person, and that McLaughlin, who was in the field down there in the Blackfoot country, knew what was going on, and that they had some correspondence between themselves, in which you were a party?

A. I don't know anything about that; I believe that McLaughlin has already testified in this case, and his testimony would be better than mine on the point.

Q. I was just calling your attention—

By Mr. WALSH.—One moment, Mr. Wethey; you have not answered the question as to whether or not there was any correspondence between Mr. McLaughlin and Senator Clark concerning this matter.

A. Not to my knowledge; I remember asking McLaughlin to write to me, and his letter was sent to the Senator on the subject. That was testified to this morning.

Q. And don't you know that Mr. McLaughlin was exceedingly anxious to buy this timber on the Blackfoot river?

A. I know that Mr. McLaughlin wanted to buy timber; it wasn't his money, and he didn't have to put anything up; I suppose he thought the more timber we bought the better it would be for him.

Q. How would it be better for him?

A. He would have more to look after and a more responsible position.

Q. You needed the timber, in addition to those rea-

(Testimony of A. H. Wethey.)

sons that you have already named, for use in your mills, did you not?

A. McLaughlin said that we needed it.

Q. And you also needed it, presently or prospectively, for your mines here in Butte, did you not?

A. Well, yes, in the course of years, probably.

Q. Those are the three purposes that you wanted lumber for, were they not?

A. Well, if he was carrying on a lumber business, he would want it for any purpose for which he could sell it.

Q. Now, in one of these letters, which it was promised—

By Mr. BICKFORD.—I object to the remark of counsel for the government that there was any promise made that these letters would be introduced, and state now to the Master in Chancery and to the Court, that we have brought here to be introduced and to enable the gentleman to carry on his cross-examination, certain letters, and now he says—now he makes the remark that counsel had promised to introduce letters, when, as a matter of fact, the letters which we have handed over to the counsel, and which we brought here at his request, were brought simply in compliance with his request, with no promise whatever that they would be introduced in evidence.

By Mr. MAYNARD.—I understood the counsel to say this morning that he was arranging them in their order, marking them under the arrangements that we

(Testimony of A. H. Wethey.)

had made, and that that was all done for the purpose of inspection by myself, and then their introduction in evidence. I don't know of a single bit of this testimony that I have been allowed to introduce, or their correspondence, except the two orders that were received this morning. If there are any others, I would be very glad to have counsel call my attention to them.

Q. I show you this letter from the Senator, of September 29th, 1899. I desire to have that marked by the Examiner for identification.

By the EXAMINER.—That will be marked Complainant's Exhibit No. 313.

By Mr. BICKFORD.—I was going to say that we wouldn't want those marked as exhibits, because we don't want them taken from the letter file, and they may be read into the record and taken down by the stenographer.

Q. I read from this letter now, Mr. Wethey: "I infer that the Blackfoot timber business is all fixed up, and that you confined their purchases to the 40,000,000 feet which I authorized. I note that in some correspondence received at Chicago or St. Paul, that Mr. McLaughlin suggested that some additional desirable land might be advantageously secured. I think that for the present, unless it is something exceedingly choice, that it would be well to be content with our holdings.

Respectfully,

W. A. CLARK."

(Testimony of A. H. Wethey.)

I ask you if, in the light of that letter which you have received, if you are now prepared to say that certain negotiations were not had between Mr. McLaughlin and the Senator, of which you had no knowledge?

A. I believe that the correspondence that he refers to are letters that I wrote, mentioning Mr. McLaughlin's suggestion on that point.

Q. Have you those letters in mind?

A. I have got the letter-books all here, sir.

Q. Well, if you will be kind enough, just simply for your own—

A. Shall I read this letter?

Q. Yes, sir.

A. (Witness reads as follows:) "Butte, Montana, September 11th, 1899. Hon W. A. Clark, 43 Cedar Street, New York. Dear Sir: I inclose herewith a letter from Mr. McLaughlin, dated the 9th inst., in which he states that the estimator has examined 34,595,000 feet of timber, of the value of $43,243.75. I inclose copy of my letter to Mr. McLaughlin on this subject. If you do not wish to overstep your limit of $50,000.00, wire me.

Respectfully yours,

A. H. WETHEY."

Do you want the copy?

Q. Yes, sir, you may read it, please.

A. (Witness reads as follows:) "Butte, Montana, September 11th, 1899. Mr. H. W. McLaughlin, Clinton, Montana. Dear Sir: Your favor of the 9th inst. duly

(Testimony of A. H. Wethey.)

received, enclosing estimate and reports on timber lands in Missoula county, showing a total of 34,595,000 feet, at $1.25 per thousand, amounting to $43,243.75. On account of purchase on the Blackfoot, I had previously paid you $13,093.75, so that the lumber you now submit would bring the total investment up to over $56,000.00. I would not care to exceed Mr. Clark's limit of $50,000.00 without his instructions. I note in looking over the reports that some of the ground is for a term of years, and that the timber only is being sold. If these lots where the timber only is being sold were eliminated, I think it would bring the quantity down to within Mr. Clark's figures. In the meantime, I will write to Mr. Clark, to ask him whether he feels inclined to overstep his limit of $50,000.00. If the lots on which only the timber is being offered to us is not sufficient to cut down the quantity to Mr. Clark's figures, you might leave out some of the lots where there is a quantity of tamarack. I notice that some of them run as high as seventy-five to eighty per cent tamarack. While tamarack might be all right for house finishing, I do not think it would be suitable for mine timbers. I think you may as well call in your estimator and stop the expense of estimating any more timber. I will see Mr. Bickford in regard to going down to look over the abstracts and deeds.

Respectfully yours,

A. H. WETHEY."

By Mr. MAYNARD.—I desire to have marked for the purposes of identification, this letter.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—The whole letter, do you mean?

By Mr. MAYNARD.—No, just for identification. Then I will read into the record so much as I desire.

By the EXAMINER.—I didn't mark the other letter, and I didn't understand that it was to be marked. When you read it into the record, there is no occasion to mark it.

By Mr. MAYNARD.—I read a letter of the defendant, dated "New York, November 21st, 1899. Mr. A. H. Wethey, Butte, Montana. Dear Sir: I have yours of the 17th and note contents. I note Mr. McLaughlin's suggestion not to pay cash at the present time to Mr. Cobban, and I quite agree with him. We will let the matter rest for the present.

Respectfully yours,

W. A. CLARK."

Q. Will you be kind enough to show me a letter dated the 17th? A. Of December?

Q. No, of November.

By Mr. BICKFORD.—It has already been read in evidence. It is the letter in which the five per cent reduction was proposed. Do you remember that?

By Mr. MAYNARD.—I just wanted to see it for a moment, Brother Bickford, that is all.

By the WITNESS.—There it is.

By Mr. MAYNARD.—I also desire to read into the record a letter of the defendant's, dated November 25th, 1899, as follows:

(Testimony of A. H. Wethey.)

"Mr. A. H. Wethey, Butte, Montana.

Dear Sir: I return to you the contract with Cobban. Be sure that it is all right before you deliver it to him. It is gotten up in very poor shape, and I would generally hesitate to sign an instrument of that kind. It is not necessary for me to acknowledge it.

I received yours of the 18th with reference to this matter, and note contents. I think it would be well enough to write him and inquire of him when the fall options expire, so that we may be able to decide in time.

Respectfully yours,

W. A. CLARK."

Q. Now, Mr. Wethey, will you be kind enough to let me see your letter of the 18th?

By Mr. BICKFORD.—That has already been read into the record.

By Mr. MAYNARD.—Very well, if it has been.

By Mr. BICKFORD.—You will find all of that, Mr. Maynard, on page 5-D-Mac, of the testimony of Mr. Wethey in chief.

Q. Will you be kind enough to read this letter of November 18th, into the record?

By Mr. BICKFORD.—We object to it because it is in the record already. It was read into the record on the examination in chief of this witness, and we object to this, if your Honor please, that has already been read, and there is nothing in the letter that throws any light upon this transaction in any way, shape or manner.

(Testimony of A. H. Wethey.)

There are two letters of November 18th, one of which has been read into the record, and the other one, referring to other business transactions of Senator Clark, and it has absolutely no relevancy or materiality to the matter in issue in this case, and we object to it at this time.

By Mr. MAYNARD.—Do you insist upon objecting to the introduction of the letter in evidence?

By Mr. BICKFORD.—We certainly do; it is utterly irrelevant and immaterial, and refers to matters other than those set forth in the pleadings in this case.

By Mr. MAYNARD.—I will submit it to the Examiner, and the moment the Examiner reads it, I don't believe there will be any question about it.

(The letter was read by the Examiner.)

By the EXAMINER.—Yes, I should deem it relevant and material, that is, following the lines of the examination that have heretofore been pursued in this case.

By Mr. MAYNARD.—I read the letter, as follows:

"Butte, Montana, November 18th, 1899.

Hon. W. A. Clark, 43 Cedar Street, New York City.

Dear Senator: Mr. McLaughlin went down with Mr. Knowlton, and looked over the surface of the Frankie lode, with a view to seeing whether it was suitable to use for the lumber business, and approves very much of this location, and thinks it would be wise to secure it in order for use to start a lumber-yard in the spring.

(Testimony of A. H. Wethey.)

I will see the Northern Pacific people about whether they can get a switch onto the ground, and what the expense of doing so will be. Mr. McLaughlin says they are crowded with work at St. Regis, furnishing lumber for all over the state, and are making money there. The Clinton business is shut down on account of bad roads, and we are getting no timbers from there at all. We are short of mining timber, and McLaughlin finds it very hard work to furnish us with what we need. I have requested him to see if he can secure mining timbers from some of the small mills operating in Missoula county, as I want to avoid having to buy timbers from the Blackfoot company, if possible.

Respectfully yours,

A. H. WETHEY."

By Mr. BICKFORD.—We now object to the admission of the letter in evidence, and we move to strike it out, because it manifestly details no transactions concerning which this inquiry is going on, and for the reason that it manifestly belongs to the Western Lumber Company, instead of the individual transactions of Senator Clark.

By Mr. MAYNARD.—I also desire to read into the record a letter which I have just seen in connection with these others, which have been handed to me to-day, a paragraph contained in a letter written by the defendant to Mr. Wethey, on the 9th of June, 1899, from New York City.

(Testimony of A. H. Wethey.)

By Mr. BICKFORD.—To all of which we object for the reason that it is not proper cross-examination, and relates to nothing that was brought out on the examination in chief of the witness, and it is irrelevant and immaterial.

By Mr. MAYNARD.—The paragraph contained in this letter reads as follows: "I note that Mr. McLaughlin thought it would be greatly to our advantage and enable us to have a check on the Big Blackfoot people, if we should secure some timber on the Big Blackfoot. He may be right about this.

Respectfully yours,

W. A. CLARK."

Q. Now, Mr. Wethey, as early as June 9th, 1899, when Mr. Clark wrote this letter to you, had he received this information from you by letter, or by conversation with Mr. McLaughlin?

A. A letter from me, I think.

Q. Have you that letter? A. I think so.

Q. Well, will you produce that?

A. This is June 9th, and it refers to a letter received June 5th, 1899. Shall I read this?

By Mr. MAYNARD.—May I just see it a moment?

A. Yes, sir.

By Mr. MAYNARD.—I just desire to read into the record a letter written, or rather a paragraph of a letter written to Mr. W. A. Clark by Mr. Wethey, on the 5th day of June, 1899, as follows:

(Testimony of A. H. Wethey.)

"Hon. W. A. Clark, 43 Cedar street, New York City.

Dear Sir: Your three valued favors of the 31st inst. are duly received. * * * I was talking to Mr. Bickford to-day in regard to the timber and the Forest Reserve scrip that was bought from Collins. He says the lots that have been selected are all well timbered, and he is quite sure the land and timber mentioned can be sold again to other parties at a profit, if you do not wish to keep it. McLaughlin says that we have now secured about as much timber on Nine Mile as what the Blackfoot people own. He says that they will pursue all kinds of tactics in order to interfere with his operations. He is very anxious to secure some lumber on the Big Blackfoot, so that he can hold them in check, by retaliating there if they should annoy him at Nine Mile. If he secured the lumber on the Big Blackfoot, he probably could exchange it with them for an equivalent amount on the Nine Mile, as he thinks they would be very anxious to get rid of him, to prevent him from operating on the Blackfoot, entirely.

Respectfully,

A. H. WETHEY."

By Mr. BICKFORD.—We move to strike out the letter read in evidence by counsel, for the reason that it is not proper cross-examination, and utterly irrelevant and immaterial, and does not prove or tend to prove any of the issues in this case.

Q. I have just one more letter which has been

(Testimony of A. H. Wethey.)

handed me by my friends on the other side for examination, and I desire to read into the record a letter written by the defendant of date New York, May 29th, 1899, as follows:

"Mr. A. H. Wethey, Secretary, Butte, Montana.

Dear Sir: I have your three favors of the 24th and note contents. There is too much liberty taken in making contracts without my consent. After what I have said about receiving protection from the Northern Pacific Company, there should have been no Forest Reserve scrip purchased without consulting me. I am offered this scrip at $3.50 per acre. I am to see Mr. Mellen in a day or two, and do not know just what his proposition will amount to. If I can secure timber land at a lower price than this purchase, I don't feel that I should be bound by those contracts. That is all I have to say until I know further about it. I wired you Saturday to buy no more scrip. It may be possible that this arrangement is all right, but in any event, it should not have been done without my authority. I don't think I shall have anything whatever to do with lumber on the Big Blackfoot. I know that he has paid $3.50 for the same. I will look the offers over. It is barely possible that we might have to do something of that kind for our protection, but I do not believe it.

Respectfully yours,

W. A. CLARK."

(Testimony of A. H. Wethey.)

By Mr. MAYNARD.—In writing, the following appears: "I am offered the scrip in large lots at $3.50."

By Mr. BICKFORD.—We move to strike out this letter as having no reference whatever to any averments in the bill of complaint herein, and because it is irrelevant and immaterial, and is not responsive to any issue in the case, and it is not proper cross-examination.

Q. Are you certain, now, Mr. Wethey, that you have produced the correspondence which was had between yourself and the Senator? A. Yes, sir.

Q. Or is there considerable left behind that?

A. I don't know; I gave all the letters I could find to Judge Bickford. I think all the letters that are in any way material or relevant to the matter, have been exhibited, as far as I can remember.

Q. You don't know of any other letters that, in your opinion, are material to this issue, that would throw any light upon the question that we are investigating, that are retained by you?

A. No, sir, I don't think that there are any letters that have passed between us, that would throw any light upon the subject, more than we have produced.

Q. And letter-press copies of yours sent to the Senator? A. No, sir.

Q. And is it also true that all the letters that you think would throw any light upon this subject were given to Mr. Bickford, and that I have had the power of seeing them from Mr. Bickford?

A. I should say so, yes, sir.

(Testimony of A. H. Wethey.)

By Mr. MAYNARD.—Well, that is all.

Redirect Examination.

(By Mr. BICKFORD.)

Q. I ask you to state, Mr. Wethey, with reference to this letter which you had a moment ago, the one of November 18th, to Mr. McLaughlin—relative to Mr. McLaughlin going down to the Frankie lode and examining it. I will ask you to state whether that referred to the personal business of Senator Clark, or whether it referred to the business of the Western Lumber Company?

A. It referred to the business of the Western Lumber Company.

Q. It had no reference whatever to the lands here in controversy, had it? A. No, sir.

Q. Now, in response to one question that was propounded to you by counsel upon the other side, you were asked if you knew concerning what Mr. Cobban was doing after September 16th, in the way of procuring lands and acquiring title to lands on the Blackfoot river. I will ask you to state if you or Senator Clark, either of you, knew what Mr. Cobban was doing with reference to getting title to lands on the Blackfoot river, prior to July 9th, 1899?

A. We had no knowledge at all of what he was doing, or of what his methods were, or anything about it.

Q. Now, as a matter of fact, you stated, I think, that the timber was needed for use in the mills of the

(Testimony of A. H. Wethey.)

Western Lumber Company. Now, is it a fact that the timber required on the Blackfoot river would be tributary to the mills of the Western Lumber Company?

By Mr. MAYNARD.—We object to that as leading, and as seeking to obtain an answer from his own witness, different from the testimony he has already given.

By Mr. BICKFORD.—No, I want him to explain the answer that he has heretofore given.

A. The land on the—the timber on the Blackfoot was purchased with a view to making an exchange with the Blackfoot people. I think I have testified to that several times before.

Recross-examination.

(By Mr. MAYNARD.)

Q. Mr. Wethey, the Western Lumber Company at that time—the whole of the capital stock was held by the defendant, practically, was it not?

A. Yes, sir.

Q. And you and Judge Bickford and Mr. McLaughlin were directors in the company? A. Yes, sir.

Q. Just one question more, Mr. Wethey. Why was it that this correspondence, these letters of the defendant, which were first in the order of time, were the last to be handed to me?

By Mr. BICKFORD.—We object to that upon the ground that it is not proper cross-examination, and does not prove or tend to prove any issue in this case.

A. I don't know.

(Testimony of A. H. Wethey.)

Q. You don't know that?

A. No, there is nothing in these later letters that you have just read that throws any more light on the subject.

Q. Here is the May and June letters. Why didn't you specify them?

A. Well, the letters speak for themselves.

ARTHUR H. WETHEY.

Subscribed and sworn to before me this 9th day of May, A. D. 1902.

HENRY N. BLAKE,
Master in Chancery and Examiner.

(Recess taken until ten o'clock A. M., Tuesday, May 6th, 1902.)

Tuesday, April 22d, 1902, 2 o'clock.

Hearing resumed pursuant to adjournment.

Mr. BICKFORD.—I am going to request of the gentleman the privilege of putting Mr. Bernard Noon for perhaps five minutes and to excuse Major Catlin until Mr. Noon can give his testimony, for the reason that Mr. Noon is called away from town on business.

Mr. MAYNARD.—Very well; you do not need to have any reasons.

BERNARD NOON, after being duly sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. State your name in full, please.

A. Bernard Noon.

Q. Where do you reside? A. In Butte.

Q. How old are you? A. Thirty-two.

Q. What is your profession?

A. I am an attorney by profession, but I have not been practicing since I have been in Butte to any extent.

Q. Have you been admitted to the bar of this United States Court for the District of Montana?

A. I do not remember whether I was admitted to the Circuit Court here or not; I was admitted to the Circuit Court in Iowa, but I don't think I ever was admitted here.

Q. And to the Supreme Court of Montana?

A. Yes, sir.

Q. What have you been devoting your attention to the last few years?

A. Since the death of Mr. Largey in the beginning of 1898, I have been handling the business affairs of the Largey estate and Mrs. Largey, looking after everything they are interested in. I am a kind of business manager, I guess, you would call it.

Q. Has the Largey estate or Mrs. Largey personally engaged in the lumber business in this State?

(Testimony of Bernard Noon.)

A. Yes, sir, Mrs. Largey, personally, has; the estate has not.

Q. She has acquired some timber land?

A. Yes, sir.

Q. Do you know R. M. Cobban? A. I do.

Q. Mr. Noon, I wish you would tell whether you at any time had any talk with Mr. Cobban concerning the sale by him to Mrs. Largey of any timber land?

A. I had four or five different conversations with Mr. Cobban regarding the purchase and sale of timber land, and I purchased for Mrs. Largey the tracts of timber lands in the Bitterroot valley. I think I had two different conversations with Mr. Cobban regarding that. Then I also had three conversations regarding a tract of timber land that he had for sale in the Blackfoot valley.

Q. When was that, Mr. Noon?

A. I think that was in the latter part of January, as I remember it, shortly after I purchased the Bitterroot timber lands.

Q. Of what year? A. Of 1900.

Q. State what Mr. Cobban said to you at that time?

A. Mr. Cobban came to me the first time—

Mr. MAYNARD.—I object to this as immaterial and irrelevant as hearsay and as entirely incompetent for any purpose whatsoever either to disprove any of the averments contained in complainant's bill of complaint or to prove any of the averments contained in defendant's answer in this case.

(Testimony of Bernard Noon.)

The WITNESS.—Mr. Cobban came to me and stated that he had some timber lands in the Blackfoot valley for sale and wanted to know if he could not sell them to Mrs. Largey or if I could not get together a syndicate of people to take those timber lands. I don't remember the amount that he had, but there was considerable land there, quite a body of land, and I took the matter up with my people and also with Mr. Creighton's representative at Omaha; I wrote to Omaha to see if I could not get them to investigate them, and he came in twice after that. These conversations were not very far apart; I think they were within a couple of weeks, and the last time that he was in I told him I could do nothing with it, and the matter was dropped. Then I had a subsequent conversation with him in which he stated that he had sold the timber lands to Mr. Clark.

Q. Now, at the first conversation that you had with him in which he offered to sell you lands in the Blackfoot, what, if anything, did he say about efforts that he had made to sell the lands?

A. He told me that he had made an effort to sell the same land in the Blackfoot valley to the Big Blackfoot Company, to Mr. J. T. Carroll, and to Mr. Clark.

Q. The defendant in this case, W. A. Clark?

A. Yes, sir, the present Senator.

Q. What did he say about having attempted to sell the land to Mr. Clark?

A. He said that he had had conversations with Mr.

(Testimony of Bernard Noon.)

Clark or communications with him in which he had tried to sell to him, and that Clark had made him some loans on the land—advanced him some money, and I think he had placed a deed in escrow or something as security, which he was going to take up, but it seemed that the Senator preferred not to take the lands, preferred that he sell them to somebody else if he could, and he thought of course that he ought to get more money for the land than what was called for in the loan, and that he was trying to sell them for that reason, and that the Senator preferred not to take them if he could sell them to anybody else, and of course what he said as to the amount of the loan I don't remember, nor do I remember the exact amount of the land; I know there was something said about large tracts of land in there. He had already sold some of the land to Senator Clark.

Direct examination concluded.

Mr. MAYNARD.—At the close of the direct examination I desire to move to strike out the testimony given by the witness, for the reason that it is immaterial and irrelevant and hearsay and entirely incompetent for any purpose whatsoever, either to disprove any of the averments contained in the complainant's bill of complaint or to prove any of the averments contained in the defendant's answer in this case.

Cross-examination.

(By Mr. MAYNARD.)

Q. The Largey estate bought a large body of land from Mr. Cobban in the Bitterroot, did it not?

(Testimony of Bernard Noon.)

A. Mrs. Largey individually bought it, about 2,000 acres, I think; as I remember it something like that, 2,100 acres, I think it was.

Q. And this land was pine land situated in the Bitterroot?

A. Yes, sir, principally pine. There was considerable fir on it; I believe we estimated about 20 per cent of fir.

Q. How did you buy that?

A. Bought it outright and paid cash for it. Do you mean by the acre or by the thousand?

Q. By the thousand.

A. We bought it by the thousand, so much per thousand.

Q How much did you pay?

Mr. WALSH.—Objected to as immaterial, irrelevant and incompetent and not proper cross-examination.

A. I don't remember; I think about in the neighborhood of $19,000, if I remember—$19,200, I think was the consideration; it was as I remember on a basis of $1.50 per thousand.

Q. Did you see this land before you bought it?

A. I did; I was over the land myself.

Q. Where is it situated?

A. It is situated about one mile and a half from Carleton, as I remember the station; it is part in Missoula and part in Ravalli County; I could not give the exact location.

Q. How far from Missoula?

A. I think Carleton is about sixteen miles from Mis-

(Testimony of Bernard Noon.)

soula, if I remember right; I don't know; I don't remember that very well.

Q. Did you know of Mr. Cobban having other land up in the Bitterroot?

A. Yes, he tried to sell me other lands at the same time in the Bitterroot.

Q. Did he succeed?

A. No, they were not in large enough bodies, and at that time—

Q. Do you know whom he sold them to?

A. No, I don't; I don't know that I ever talked with h'm about that other land in the Bitterroot after that time.

Q. Did you see the other land?

A. I don't think so; I don't remember going to look at any other land up there. I think this was about all our people wanted at that time, and as I remember, the other bodies were all small, with four or five or six million feet in a body.

Q. He might have other pieces besides that in Ravalli and Missoula counties, might he not?

A. He might, yes, sir.

Q. That you didn't know anything about?

A. He might have had.

Q. Did you see this land in the Blackfoot country that he proposed to sell?

A. No, I saw the plats that he had; he had plats with him at the time. We never took it up; we never consid-

(Testimony of Bernard Noon.)

ered the matter at all further than to say that we did not care to go into the business that extensively.

Q. How many million feet did he propose to sell you?

A. Well, I don't remember. He talked over the timber lands, I think, what he had got there and how much he had to start with and how much he had sold and how much was left. I had some memoranda of it, but I have been looking that up and cannot find it; I presume I destroyed it at the time I dropped the matter.

Q. He claimed to have lands in Ravalli County and Missoula County and Deer Lodge County, did he not?

A. I don't remember anything about Deer Lodge County. Now, maybe the Blackfoot lands were in Deer Lodge County; I don't know whether Deer Lodge County extended that far or not.

Q. Don't you know that one-half of the lands under consideration in this case are in Deer Lodge County substantially?

A. No, I don't know where the boundaries of Deer Lodge County are; I know they extend over there into the Blackfoot valley; whether Deer Lodge or Missoula covered this tract of land that he had I could not say.

Q. If you don't know whether the timber was growing in Missoula County or Deer Lodge County, you have not as accurate a knowledge of the land and the timber as you would like?

A. Well, no, I have not as accurate a knowledge of the land and timber as I would have had if I had taken it up to buy it; if I had, we would have taken it up by sections

(Testimony of Bernard Noon.)

and would have the townships, ranges and sections and counties and everything.

Q. The long and short of the entire matter is simply this, that Mr. Cobban some time came to you and talked with you about the question of Mrs. Largey buying some timber from him?

A. Yes, sir, some timber in the Blackfoot valley, pretty well up the Blackfoot valley, as I remember from the plats, pretty well up the Blackfoot river.

Q. But where this timber was in the Blackfoot valley and in what county it was or other information that you would have acquired had it proceeded to any length, you have not got?

A. No, I have not; the property is—I had that in my memoranda, but having destroyed the memoranda or lost it, of course I haven't it now.

Q. Now, whether or not the land and the timber that he was talking to you about, was the land that we are considering in this case you do not know?

A. I do not know, no; I never read the matter in this case and I don't know what lands are considered in it and would not know if they were the same lands, even if I had read it.

Q. Did he tell you how much money the defendant in this case, Senator Clark, loaned to him?

A. I don't remember whether he did or not.

Q. Do you remember for what purpose—

A. The probability is that he did, but I could not say whether he did or not.

(Testimony of Bernard Noon.)

Q. For what purpose did he say the defendant had loaned him money?

A. I do not remember that, either; I do not suppose he told me what purpose it was for.

Q. You don't know that it was for the purpose of acquiring land, paying for land that he had already acquired and getting more land? A. I do not.

Q. So that as far as you know the land that he proposed to sell you was land other than that which he had obtained from Senator Clark?

A. It probably was, because he stated that it had not been sold to Senator Clark, and if it had been obtained for Senator Clark it probably would have been sold to him.

Q. He told you at the same time that he had sold some land to Senator Clark? A. Yes, sir.

Q. But he did not mention and describe the land?

A. No, he did not; it was lands up in the Blackfoot valley that he had sold to Senator Clark.

Q. And that he had received loans from him?

A. That he had received loans from him.

Q. But for what purpose you do not know?

A. No, I don't know.

Q. I would like to ask you, did you examine the abstract of the land which you bought up in the Bitterroot?

A. I presume I did; I don't remember, though, whether I did or not, whether I examined those myself or had somebody else examine them.

Q. Do you know under what acts he had acquired this land?

(Testimony of Bernard Noon.)

A. No, I could not remember now; I could tell by looking it up, I presume, but I don't remember.

Q. Or the persons from whom he bought?

A. No, I don't remember the persons from whom the purchase was made.

Q. You don't know that?

A. I don't remember, no; I could not tell without looking at the abstract.

Q. By refreshing your memory, could you say whether it was under the Stone and Timber Act or not?

A. Well, I think it was under the Stone and Timber Act, if I remember, that the lands were purchased, yes; I am pretty sure it was under the Stone and Timber Act. I think there were some homesteaders in there, too, that had acquired title under the homestead laws.

Q. When did you buy this land?

A. I think it was about the 22d of January, 1900.

Q. Do you know whether he had offered that piece to Senator Clark or not?

A. He told me he had, and he had also offered them to J. T. Carroll, and also to the Blackfoot company.

Q. The piece that you bought?

A. Yes, sir, the same piece. I think Mr. Carroll was considering that, as I remember, at the time that I purchased it; he was also considering a proposition to buy it; it was very handy to the railroad track and very acceptable, and was quite desirable timber.

Q. You say you don't know whether you examined the abstracts or not?

(Testimony of Bernard Noon.)

A. I don't remember whether I did that or whether I had Mr. McBride do it; I think I did it myself, though.

Q. Did you know anything about the circumstances or conditions under which he bought?

A. No, nothing whatever; I never saw any of the parties nor had any conversation with them.

Redirect Examination.

(By Mr. WALSH.)

Q. Mr. Noon, as I understood you, you said that Mr. Cobban, as you understood, owned some other land in the Bitterroot than those that you bought, but they were in small bodies?

A. Yes, he either owned them or had options on them; I don't remember now.

Q. Now, what particular objection did you find to buying land in small bodies?

A. Well, of course, our people were not in the lumber business at that time, nor had not any intention of going into it extensively; they bought the land for the protection of the mine, and that was about all the land they wanted, and of course land in small bodies takes small mills to cut them out, and made too many outfits, too many different tracts of timber land. We did not consider land in small bodies quite as desirable as a larger body of timber land like we bought there, that was all. A body of timber of five or six or eight millions would not last—would not make so long a setting for a mill as a larger body, and we had to move oftener.

(Testimony of Bernard Noon.)

Q. Now, as I understand you, when Mr. Cobban talked with you about the lands he had offered already up the Blackfoot valley he told you that he had already sold some of the land that he owned up there?

A. Yes, sir.

Q. And do you remember who he told he had sold to?

A. He had sold to Senator Clark.

Q. Now, what portion of the remainder of the land owned by him was it that he offered you, or did he offer you the whole of what he had left?

A. All of what he had left.

Q. Now, counsel asked you something about Mr. Cobban offering you some land that he had not acquired for Senator Clark. Do you know that he ever did acquire any land for Senator Clark?

A. No; I know nothing whatever about it; I never had anything of the kind intimated to me at all or never heard of such a thing until after this matter came up last summer and the case was talked of a good deal, and I heard some talk to that effect.

Q. Mr. Cobban told you he had sold some of the land that he owned in the Blackfoot valley to Senator Clark?

A. Yes, he had sold some of the land he had acquired there to Senator Clark.

Recross-examination.

(By Mr. MAYNARD.)

Q. Do I understand you to say that you did not buy this timber for lumbering purposes?

(Testimony of Bernard Noon.)

A. We did not buy it for the purpose of selling it; it was bought more for the purpose of protecting the mine which they own here in town. At that time it looked as though pretty nearly all the accessible timber lands in the country were going to be purchased either by Mr. Clark or by the Blackfoot company, and our people thought it would be desirable to own a body of timber land that they could supply their own mine with timber, and there being considerable fir on this piece of land, we purchased it. It was purchased by Mrs. Largey first, and afterwards sold to the individual owners of the mine, that is, Mr. Creighton, who owned a half-interest and the children, who each owned a one-twelfth interest; it was purchased for the mine; we were not then manufacturing for sale.

Q. Mr. Creighton and the Largey children, do you mean?

A. Yes, sir, and afterwards transferred to the mining company, after the company was formed; it was transferred to the Speculator Mining Company, and now stands in the name of the Speculator Mining Company. They owned the Speculator mine, and it was incorporated last summer and the lands were transferred to it and belong to the company. At that time we were not manufacturing lumber for sale; we had a mill at Gold Creek that we were cutting on a contract for the Blackfoot Milling Company, a mill that we had taken on a mortgage, foreclosed the mortgage, and taken the mill, and were completing this contract, and did not ex-

(Testimony of Bernard Noon.)

pect at that time to go into the work of manufacturing lumber for sale.

Q. But at the time you bought this timber, were you not the owner of the mill on Gold Creek?

A. I think so, I think at that time—no, let's see; it that time we were not. The mortgage was not foreclosed till the 19th of April following; the mill then belonged to P. L. Kelly, but Mrs. Largey had a mortgage on his outfit and on everything that was there, and he gave it up afterwards, and we took it off his hands.

Q. Very well, but this lumber was bought in January, 1900? A. Yes, sir.

Q. And the mortgage on this mill was then in the process of foreclosure?

A. No, not at that time; we did not start to foreclose at that time, but had made up our minds at that time that he would not make a success of it, and would give it up sooner or later, and he gave it up afterwards voluntarily; it never was foreclosed.

Q. When did he turn it over?

A. The 19th of April.

Q. Four months after you bought this timber you owned a mill? A. Yes, sir.

Q. And you knew at the time that you bought the timber this mill was coming into your possession?

A. We thought it was, yes; of course at the time we bought the mill and for nearly a year afterwards

(Testimony of Bernard Noon.)

we did not expect to engage in the manufacture of lumber for sale.

Q. How about this contract with the Blackfoot Milling Company?

A. That was a contract that was entered into by Mr. Kelly with them to cut timber on their land and put it on the cars for them at so much per thousand.

Q. But in the negotiations which were had between yourself and Mr. Kelly ,wasn't it one of the conditions, one of the elements that entered into that negotiation, the fact that there was in existence this contract between himself and the Blackfoot Milling Company and that you would carry it out?

A. Yes, we agreed to carry out that contract with him in taking the outfit off his hands.

Q. Then you needed a mill and you needed lumber, did you not? A. Yes, sir.

Q. Wasn't that one of the purposes for which you bought this timber from Mr. Cobban?

A. No; you see that mill was not the kind of a mill that we wanted simply for the purpose of supplying the mine with timber; it was too big; it required a bigger outfit. That mill was a mill that was large enough to cut for the market, but the mill that we would have put in at the time we purchased this timber, or the mill that we expected to put in, and the one that will be put in, if we ever put one in, would be a smaller one than that that would supply the mine with timbers. The mill at Gold Creek had nothing to do

(Testimony of Bernard Noon.)

with the purchase of timber land, or the purchase of timber land had nothing to do with the mill.

Q. As a matter of fact, with that mill you did cut up the timber that you took from these lands to supply the Blackfoot Milling Company?

A. We cut the timber that was on their land, yes, to fulfill the contract.

Q. And you have since that time engaged in the commercial business, have you not?

A. Yes, sir, since that time we have put that mill into another setting in the Bitterroot, and we have also acquired other timber land in the Bitterroot and acquired lands in the Coeur D'Alene Lake Country.

Q. And are now engaged in cutting up the trees growing upon this land that you bought from Cobban?

A. No, the timbers they are cutting up there belongs to Mrs. Largey individually, and this timber that we bought from Mr. Cobban belongs to the Speculator Mining Company.

Q. They have not got around to it yet?

A. No, it is not that; we will never touch it, because it belongs to the Speculator Mining Company; that is a separate and distinct concern in which Mrs. Largey owns one-sixth of the stock, and she owns all of the lumber business and owns one-sixth of the stock in the Speculator Mining Company. They are holding that timber land to protect themselves and to supply themselves with timber in case the prices of lumber go too high to suit them.

(Testimony of Bernard Noon.)

The EXAMINER.—Let the stipulation be entered that I can certify to the testimony of Mr. Noon if he should not be here to sign it.

Mr. WALSH.—Yes, sir.

Mr. MAYNARD.—That is satisfactory.

_____.

Subscribed and sworn to before me this _____ day of _____, 1902.

_____,

Standing Master in Chancery and Examiner.

I do hereby certify that the testimony of the said witness has been correctly transcribed.

HENRY N. BLAKE,

Examiner.

Tuesday, April 22d, 1902, ten o'clock A. M.

Hearing resumed pursuant to adjournment.

JOHN B. CATLIN, a witness on behalf of the defendant, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WALSH.)

Q. Mr. Catlin, where do you reside?

A. Missoula, Missoula County, Montana.

Q. How long have you lived in the county of Missoula?

A. Well, I first went into Missoula County in 1868; but the part that I lived in at that time is now cut off,

(Testimony of John B. Catlin.)

and is now what is known as Ravalli County; the county was divided.

Q. What has been your business since you have been in the State and territory, Major?

A. Well, sir, I have mined, I have farmed, I have kept a hotel, I have been Indian agent for the government at the Blackfoot agency, I have been Receiver of the United States land office at Missoula, I have been United States Commissioner—part of that time, since, and I am at present engaged in selling and handling real estate at Missoula.

Q. Have you ever practiced before the land office as an attorney, and if so, during what period?

A. I have more or less since I left the Missoula land office there, as receiver, up to within the last six months.

Q. During what period were you receiver of the Missoula land office?

A. I was receiver there—I can hardly recollect the date. The Missoula land office was a new office, and I was appointed receiver and John Anderson was appointed the register. At the time that we were authorized to open the office, the register died, and there was quite a delay; I think from November—I will say from November, 1891—from November, 1890, to April, 1891; that is my best recollection about it.

Q. And up to what period?

A. Well, I have made—I think I stayed my term up to within the last six months.

(Testimony of John B. Catlin.)

Q. That is, I mean to what period were you receiver of the land office?

A. I was receiver of the land office four years, from November, 1890, to the expiration of my term on the fourth of January, 1894.

Q. And what has been the character of the business you have been doing out of the land office since that time—what character of business have you done with the land office, since that time?

A. Making final entries and assisting people in making final proof.

Q. During what period were you engaged down at the Blackfoot agency?

A. I went down to the Blackfoot agency on the 30th day of June, 1889, and remained there until about—I think some time in October, 1890.

Q. What employment, if any, Major, did you have during the year 1899?

A. I was employed in 1899, I think in January. I went into the employ of Cobban & Dinsmore, in Missoula, in the real estate business.

Q. Who comprised that firm?

A. R. M. Cobban and Samuel Dinsmore.

Q. And what was the nature of the duties you performed in connection with that employment?

A. When I first went to Missoula, to go into their employment, they had a proposition to irrigate the country below Missoula, towards Frenchtown, and also the South Missoula flats, lying out towards the Post, four

(Testimony of John B. Catlin.)

miles from there, and I was acquainted with the old-timers and the old settlers. There is hardly an old settler in the country that I wasn't acquainted with. I went down to see them, to see if we could get them to take water, provided we could furnish it to them.

Q. What was the project? How were you going to get the water out?

A. By a dam on the Missoula river.

Q. A dam on either side, so as to thrown the water out on to the bank? A. Yes, sir.

Q. I see. The idea in mind at the time you were employed by Cobban & Dinsmore was that you were to undertake to get these people to take the water, provided you could get it out of the Missoula river?

A. Yes, I had had a good deal of dealings with Mr. Dinsmore for the short time he had been in the country.

Q. Had you met Mr. Cobban at this time?

A. I had never met Mr. Cobban in my life. I was residing in Hamilton at the time, and Mr. Dinsmore telephoned me to come down to Missoula, that they had a project there that he thought I could assist him in. I didn't go down there right away, to find out what it was, but I afterwards received a letter from him, inviting me down to meet Mr. Cobban. I went down, and I immediately arranged with them, and got my family ready, and arranged to take them down to Missoula and go into their employ.

Q. Well, then, what work did you actually undertake when you did go into their employ?

(Testimony of John B. Catlin.)

A. Mr. Dinsmore and myself interviewed the people there at Missoula, and about five miles below Frenchtown, about twenty-three or four miles up the country there, to see what arrangements we could make about selling them water, provided we could get it and furnish it, and that was the work that I undertook to do.

Q. Now, what other work of any character did you have to do in connection with the business of the firm?

A. Well, it was to look after real estate and handle it.

Q. Were you afterwards concerned in any way in the making of any entries under the Timber and Stone Act, by any of the parties whose entries had been questioned in the bill of complaint in this case?

A. I was.

Q. Now, what, if anything, did you have to do with any of those matters, Major?

A. I quite often made their applications to purchase timber lands.

Q. Those would be called their filing papers, wouldn't they? A. Yes, sir.

Q. Did you ever have anything to do with the making of the final proof? A. Yes, sir.

Q. What did you have to do with them?

A. I looked after them to see that they were put into publication.

Q. Well, I spoke about the final proofs, Major.

A. Well, they were put into publication. That necessarily came in, although I used to see that the pub-

(Testimony of John B. Catlin.)

lished notices were correct, and the description of the land, and I looked after them, the majority of them, up to the time that proofs were accepted.

Q. Well, do you remember at any time having paid the purchase price into the land office for any of these claims? A. Yes, sir, I think I did.

Q. Well, what, if anything, was there unusual in that, Major? A. Nothing, sir, at all.

Q. What is the practice of yourself and other attorneys practicing before the United States land office, as to the payment of the purchase money into the office?

A. Well, in a great many instances the parties would go into the land office to make their final proof, and they paid the money in themselves, and, in some instances, they were paid in by others. In several instances they were paid in by myself.

Q. Now, Major, you practiced in the land office before you went into the employ of Cobban & Dinsmore, did you not? A. Yes, sir.

Q. Well, while you were down at Hamilton?

A. Yes, sir.

Q. Well, what if anything was there unusual about your paying in the purchase price for land at the land office, for your clients, while you were at Hamilton?

A. Nothing whatever.

Q. Did you actually do that?

A. You understand that my work in Hamilton was done before I was a United States Commissioner, and proofs were made there, instead of at the Missoula land

(Testimony of John B. Catlin.)

office; in order to save expense they would be made before a United States Commissioner. They were, too, generally.

Q. What was the practice in that respect, when you were receiver of public moneys in the United States land office at Missoula, with regard to whether the money would be paid by the purchasers themselves, or by their attorenys, who represented them in the proceedings?

A. There was no difference in the matter, whether the money was paid by the applicant at the time of making final proof, or by his attorney, so that the money was paid prior to the time the receipt was issued.

Q. Now, Major, I wish you would tell us with which of these entries, if any of them, you had anything more to do than the preparing of the papers and the writing for the publication and proof, in the land office?

A. Well, in some instances, I paid the money myself, and I took deeds for the land after proof was made. In other words, I bought the land.

Q. You bought the land? A. Yes, sir.

Q. And which of the entries, if any, did you have anything to do with the matter of inducing the parties to take up the land?

A. I think there were about two.

Q. Whose entries were those?

A. One was Mrs. Catlin, my wife, and another one

(Testimony of John B. Catlin.)

was Miss Wright, who was afterwards married and became Mrs. West of Stevensville, Montana.

Q. I wish you would tell us about these others, then, these others, other than those you have spoken of.

A. I arranged to borrow the money to pay for the land for them.

Q. Well, you were interested in this entry of Miss Wright, Major. Just go on and tell us what you know about that entry.

A. Some two or three months before that entry was made, I met Miss Wright, and she expressed a desire to take up a claim under the Stone and Timber Act. I told her, provided I saw an opportunity, I would let her know, and after that, say a couple of weeks, Mrs. Catlin talked to me about it, and then I told her I would see about it, and I told her what Miss Wright had said, and they arranged through me to take up their claims.

Q. What, if anything, did you say to Miss Wright, concerning the money with which to make the purchase?

A. I said that I would borrow the money for her to make her proofs.

Q. Did you go out with her at the time this land was selected for her? A. I did.

Q. And where did you borrow the money for them?

A. I borrowed it of Mr. Cobban.

Q. Now, Major, what relation, if any so far as you

(Testimony of John B. Catlin.)

know, did Mr. Cobban sustain to any of these entries, prior to the time final proof was made on them?

A. Any of these entries, you mean these particular entries that we were—

Q. No, of the entries referred to in the bill of complaint?

A. I would say none whatever, excepting where parties had applied for a loan to make their proof.

Q. What person do you know of as having been hired by Mr. Cobban during the year 1899, to go upon the public land and take up a timber claim in his interest? A. I know of none.

Q. For the purpose of conveying to him?

A. None, sir.

Q. What person, taking up a claim under the Timber and Stone Act, during the year 1899, do you know of, as having made an agreement prior to the time that he made final proof, that he would convey the land to Mr. Cobban? A. No one; none whatever.

Q. What agreements of that kind did you ever make with any of these parties on behalf of Mr. Cobban?

A. I never made an agreement with any party. I never had any idea of the kind, or that Mr. Cobban or anyone else would take this land until after the proof was made in the land office.

Q. What contracts or agreement of that kind did you make with any of these parties prior to the time the final proof was made?

(Testimony of John B. Catlin.)

A. Never made any; never mentioned the subject.

Q. Now, you said that Mr. Cobban did loan some money to some of these people with which to make their final proof? A. He did.

Q. So the money loaning business in the office of Cobban & Dinsmore was restricted, Major, to the matter of loaning money with which to make final proofs upon the timber and stone entries, was it?

A. It was not, no, sir.

Q. To what extent did it go, Mr. Catlin?

A. Money was loaned out of that office to a great many people that had ample security for it.

Q. What was the character of the security?

A. Real estate.

Q. What kind of real estate was it?

A. Lands that the parties had a deed to or a title to.

Q. Who conducted that part of the business?

A. The land part of it?

Q. Yes, sir? A. Mr. Cobban.

Q. What, if anything, Major, do you know about the defendant Clark, having employed Mr. Cobban, R. M. Cobban, of Cobban & Dinsmore, to acquire for him, timber lands by himself procuring these entrymen named in the bill of complaint, who took up these timber claims, and subsequently conveyed to Mr. Cobban, and then from Mr. Cobban to Mr. Clark?

A. I know of none; in fact, I can say that that couldn't have been done. I knew the negotiations that

(Testimony of John B. Catlin.)

were pending with other parties, and if they had been doing this work, I would have known it.

Q. Well, what do you know about any—about selling it to anyone else?

A. Well, I know they were negotiating with J. T. Carroll for a lot of timber.

Q. Who were negotiating with J. T. Carroll?

A. Messrs. Cobban and Dinsmore.

Q. During what period?

A. I couldn't give the exact time, but it was prior to the time this land was sold; for after that they sold it to W. A. Clark, and they wouldn't have tried to sell it to anyone else if they had already sold it.

Q. When was this? A. This was in 1899.

Q. What time in the year 1899?

A. In the fall of 1899.

Q. What else do you know about their efforts to sell this timber to anyone else?

A. I know that they were trying to sell it to the Blackfoot company.

Q. Well, what do you know about that?

A. I know that Mr. Cobban told me—

By Mr. MAYNARD.—I object to this line of questioning of the witness, for the reason that it is utterly irrelevant and immaterial, and unless he knows about it of his own knowledge, it is not competent testimony, and we therefore object.

By Mr. WALSH.—We offer any statements that may

(Testimony of John B. Catlin.)

have been made by Mr. Cobban to this witness during the summer of the year 1899, and we contend that it is proper to introduce in evidence the testimony, as going to show and to disclose what his intentions were, and we maintain that it is a part of the res gestae.

By Mr. MAYNARD.—Well, we object to such testimony being offered, upon the ground it is irrelevant and immaterial, and is hearsay.

A. Well, I can only say that I know Mr. Cobban told me that he was negotiating with the Blackfoot Milling Company through Mr. McLeod.

Q. And when was it that he told you this, Mr. Catlin? A. At the time they were going on.

Q. When was that?

A. It was in the summer of 1899 or the fall, I would say, to the best of my recollection.

Q. Well, what else do you know about efforts upon the part of Mr. Cobban to sell this timber?

A. I don't know anything more in regard to it. I never knew. I might have stated that I knew of my own knowledge of the negotiations with Mr. Carroll, because this was talked of in my presence, in Mr. Cobban and Dinsmore's office.

Q. That is, the talk with Mr. Carroll?

A. Yes, sir.

Q. Now, what, if anything, do you know about any trips that Mr. Cobban made east, with a view to disposing of this timber land?

A. Nothing but hearsay. I know that Mr. Cobban

(Testimony of John B. Catlin.)

made several trips east, but farther than that, I could not say.

Q. Well, when he was going east, did he say anything to you about the business upon which he was going, or what it was that called him there?

A. I don't recollect that he did.

Q. When was it that he made these trips?

A. Well, I could hardly say. He made several trips. He made trips east during the summer and fall of 1899.

Q. And now, Major, where was this timber land that you spoke about and that was the subject of the negotiations?

A. Some of it was in the Bitterroot valley, but the majority of it was in what we call the Blackfoot country, up in the Blackfoot.

Q. Now, I wish you would state, Major, what knowledge you had, at the time these transactions were going on, of the laws of the United States, condemning the making of entries of timber and stone land in the interest of some one other than the entryman, and that any agreements or contracts to convey to someone else, before making final proof?

A. Well, I knew that they were positively forbidden.

Q. Now, do you remember of ever having seen Mr. Griswold about the office of Cobban & Dinsmore during that season? A. Yes, sir, quite often.

Q. What do you know about what instructions, if any, were given to Mr. Cobban, with reference to Mr.

(Testimony of John B. Catlin.)

Griswold—with reference to the acquisition from these various entrymen and entrywomen, of their lands entered under the Stone and Timber Act?

A. Well, I don't know that I could say positively what his instructions were that were given to Mr. Griswold. I could say that I know that I have heard Mr. Cobban repeatedly say in our office that in no case should it be done.

By Mr. MAYNARD.—We object to the testimony of the witness, upon the ground that it is irrelevant and immaterial, and incompetent. You needn't go on and testify as to what you heard Mr. Cobban say in the office?

Q. Were you going to tell what Mr. Cobban said to Mr. Griswold?

A. I was going to tell what Mr. Cobban said on all occasions in the office, in regard to making any contract whatever.

Q. Well, I am asking you particularly, Major, as to whether you are about to tell what he said to Mr. Griswold?

A. I cannot positively say. I cannot recall a time when Mr. Griswold was present; that is, to my recollection. I wouldn't undertake to say.

Q. Well, now, what instructions, if any, did he give to him in regard to that matter?

By Mr. MAYNARD.—I object to that as irrelevant, and immaterial and incompetent, and hearsay; and it has nothing to do with any of the issues in this case.

(Testimony of John B. Catlin.)

A. He instructed him in all cases to make no contract or agreement of any kind in this matter, before they had acquired title and received the final receipt.

Q. Well, did you ever overhear any conversation between Mr. Cobban and any of these entrymen, Major, with reference to the matter of purchasing their lands? A. Yes, sir, I have.

Q. And what was that conversation?

A. I heard people that would come into the office and say that they wanted to take up a timber claim, and wanted to know if he would buy it, and Mr. Cobban invariably told them, "No," and he wouldn't talk purchase to them.

Q. Now, what authority, if any, did you have, Major, in the way of loaning any money to these parties who desired to make final proof upon their timber claims?

A. I had none whatever, except as the occasion came up, and I was instructed by Mr. Cobban. I never loaned one dollar without instructions from Mr. Cobban to do so.

Q. And, in any case, so far as your knowledge goes, Major, where money was advanced to any of these entrymen with which to make entries under the Stone and Timber Act, at what—what was the condition upon which the money was advanced?

A. The cases that came under my immediate observation there, that I was particularly interested in, were instructions from Mr. Cobban, when he had arranged with these people to make them a loan, in some in-

(Testimony of John B. Catlin.)

stances, that money was given to me, and I went to the land office and there I gave it to the officers at the land office, to pay into the land office for them, as fees under those conditions.

Q. Well, now, Major, was this matter of loaning money to parties with which to make final proof upon land entered under the Stone and Timber Act and other acts of the Congress of the United States, new with you?

By Mr. MAYNARD.—I object to that upon the ground that it incompetent, irrelevant and immaterial to the issues in this case for any purpose, and further that it is leading.

A. No, sir.

Q. What, if anything, do you know, Major, of the prevalence of such custom or practice, in the matter of the acquisition of lands under the Laws of the United States?

By Mr. MAYNARD.—I object to that upon the ground that it is incompetent, irrelevant and immaterial to the issues in this case for any purpose, and further, that it is leading; because these crimes have been continually committed in this State, is no precedent or justification for this transaction.

A. I know that it has been a custom ever since I knew anything about the land law, in Missoula, from the time that I went in there as receiver of that land office.

(Testimony of John B. Catlin.)

Q. Did you ever know of any law of the United States which prohibited the entryman or entrywoman from borrowing any money with which to make final proof upon their lands, if they didn't have money of their own?

A. I never did, and I certainly wouldn't have accepted it when I was receiver of the land office, if I had known there was any law against it that I had seen or known.

Q. In this case, Major, where parties loaned money to entrymen taking up claims under the public land laws of the United States, how is the loan usually secured?

A. Usually secured by a mortgage on the land, or if a person has other property, that they can secure a loan on.

Q. But usually, you say, it is secured upon land that is already acquired? A. Yes, sir.

Q. By a mortgage on the land acquired?

A. Yes, sir.

Q. And when is the mortgage ordinarily executed?

A. Well, immediately after, or soon after the final receipt is issued.

Q. And have you ever known an instance, Major, in which some one was willing to loan all the money necessary to pay for the land, for the land office fees, and the expenses of filing and the witness fees, and have the loan secured by a mortgage on the land acquired?

A. Yes, sir, a great many of them. The First National Bank of Missoula has done that business for

(Testimony of John B. Catlin.)

years, and is doing it at the present time, to the best of my knowledge. They are doing it now.

Q. And how, if at all, is the lender secured, Major—intervening the time of paying the money into the land office and the execution of the mortgage or deed?

A. The entryman to whom the money is loaned—you simply have to trust the entryman, or wait until after their proof is made, and then if the party fails to secure them, then to commence proceedings.

Q. Well, now, in your experience, Major, have you ever known a case where it was necessary to institute a suit to recover, subsequent to the giving of the mortgage or other security?

Mr. MAYNARD.—That is objected to for the reason it is irrelevant, incompetent and immaterial to the issues in this case.

A. I have not.

Q. What degree of risk, in your experience, does the loaner take, in advancing the money to pay for the land, in obtaining the execution of a mortgage on the land?

Mr. MAYNARD.—I object to that upon the ground that it is incompetent, irrelevant and immaterial to the issues in this case for any purpose, and further, that it is leading.

A. Well, sir, I don't think that he takes any risk. Nothing has come under my observation where he was a loser by it.

Q. The simple question, then, would seem to be

(Testimony of John B. Catlin.)

whether or not the land itself is sufficient security for the loan? A. Yes, sir.

Q. Now, Major, what means of information do you know Mr. Cobban to have, by which he could be apprised as to the sufficiency of these lands as security for the money that he was advancing for the purpose of making final proof?

A. Mr. Cobban had men in his employ as cruisers, and they went on to this land and estimated as to the amount of timber there was on them, and those estimates were turned in to him, and it was an easy way to determine whether it would justify the loan or not.

Cross-examination.

(By Mr. MAYNARD.)

Q. Mr. Catlin, when did you enter the employ of Cobban & Dinsmore?

A. I think I entered their employ in January, 1899.

Q. Moved from your home in Hamilton down to Missoula, at the time? A. Yes sir.

Q. How long had you known Mr. Cobban?

A. Never saw him in my life until I went to Missoula to meet him by request of his partner.

Q. And you either saw him and made arrangements with him then, with reference to entering into his employ, or a little later?

A. I saw him then, and talked the matter over with both Mr. Cobban and Mr. Dinsmore, both, I think, to the best of my knowledge, I didn't give them a decided

(Testimony of John B. Catlin.)

answer until after getting home, going back to Hamilton; but I subsequently, in a very few days, notified them that I would accept their offer, and immediately moved down to Missoula with my wife.

Q. How long had you known Mr. Dinsmore at this time?

A. The first time I ever met Mr. Dinsmore was possibly two years prior to the time that I went into their employ.

Q. And where was he then living?

A. Mr. Dinsmore was—I think he was living in Butte. He was in the life insurance business, had come here from Salt Lake—to Butte, and he came down into the Bitterroot upon some business there, and I sold him four hundred acres of land within two weeks from the first time I ever saw him.

Q. Where was that land situated?

A. It was situated above Hamilton, opposite Grantsdale, on the Bitterroot river.

Q. Was it ranch property? A. Yes, sir.

Q. Do you know whether he owns that property now or not?

A. I think he owns a portion of it. That piece of land was put out for an orchard. That whole tract, and it was staked and sold, a portion of it, and Mr. Dinsmore, I would say, has eighty acres of it at the present time.

Q. How much did you sell the four hundred acres for? A. Forty-eight hundred dollars.

(Testimony of John B. Catlin.)

Q. What business was Mr. Dinsmore doing there?

A. He was an agent for the Aetna Insurance Company. I might be mistaken about that, but I think that was it.

Q. At Hamilton?

A. He came there and stopped over there a few days in that business.

Q. Oh, he had been living in Hamilton.

A. No, sir. He had not; he had never lived there at that time. We have lived there ever since we moved to Hamilton, until he went on to this piece of land that I sold him.

Q. Were you engaged in any other business with him prior to entering his employ in 1899?

A. No, sir, none except the sale of this piece of land that I have mentioned.

Q. Was he engaged in the—as an agent for a life insurance company, up to 1899—or up to the time of his entering into partnership with Mr. Cobban?

A. I couldn't say; I don't think he was. I think he gave his whole attention to that orchard.

Q. How long had the partnership of Cobban and Dinsmore been formed prior to your entering into their employ?

A. I couldn't answer that, sir, I don't know.

Q. It had been but a short time?

A. I would say it had been but a short time, but as to the time, I couldn't say.

(Testimony of John B. Catlin.)

Q. You had no knowledge of what Mr. Cobban had been doing prior to your meeting him?

A. Never had met the man in my life, no, sir; knew nothing about it.

Q. How long did you hire out to these people for?

A. I don't know that there was any stated time. I am in Mr. Dinsmore's employ at the present time, and have been from the time I went in with the firm of Cobban & Dinsmore.

Q. That is, as I understand it, you were in the employ of Cobban & Dinsmore until its dissolution?

A. Yes, sir.

Q. And that was when?

A. I couldn't state just the time.

Q. You don't know that?

A. No, I don't know exactly; I know I continued right in the business, in the same office, and am working for him yet, but I couldn't say just when they did dissolve partnership. I could make a guess at it, but it would be only a guess; that is, if you want a guess.

Q. That employment wasn't of a particular character, was it? A. It was when I—

Q. It was to do the general work of an assistant in their office?

A. It was of a particular character at the time I was first engaged there.

Q. What is that?

A. It was when I was first engaged there, because

(Testimony of John B. Catlin.)

I knew exactly what I was to do when I first went into their employ.

Q. You knew what you were to do?

A. Yes, sir.

Q. How long did you know that?

A. I knew it when I first had a talk with them and engaged with them to go to work.

Q. What was that?

A. That was to assist them in disposing of stock to the farmers in the Frenchtown valley, the water which was to be taken out of the Missoula river, to irrigate the land with.

Q. In case they happened to do it?

A. Yes. They had to determine to do it, provided they would sell the stock.

Q. Did you succeed in that enterprise?

A. We did not.

Q. Then the project was abandoned, was it?

A. It was, partially; they have taken out some water since.

Q. How soon, after the first of January, 1899, was this project abandoned?

A. Oh, I think it took us a matter of three months to satisfy ourselves that we couldn't arrange with the farmers there and sell the stock.

Q. So that even by the first of March, 1899, the definite purpose for which you were engaged, was abandoned.

(Testimony of John B. Catlin.)

A. About that time, I would say possibly a little later than that; about that time, though, I should judge.

Q. Well, what do you understand or what did you understand then was to be the nature of your duties after the first of March?

A. Handling real estate. When I went into the employ of Cobban & Dinsmore, I had, prior to that time, been engaged in the real estate business in Hamilton. I had options on a great many pieces of land, and I reserved the privilege when I entered into their employ, to handle this Bitterroot land; and, if I could make a sale of it on my own account, I was to do it. They had nothing whatever to do with that. Missoula was a pretty good town to sell real estate, and I was attending to all their little affairs as long as I had a real estate office with them, and I was helping them in the business all I could. I had an office, and I would sell that property and look up all such matters as that.

Q. Can you state any reason why if you were employed on the first of January for the one specific purpose that you have named, of your being continued in their employ after the first of March, when the project mentioned by you was abandoned?

A. I think the only reason they continued me in their employ because they thought I was worth the money that they were paying me for handling real estate. I am pretty familiar with the real estate in that country, and I have been in that country since 1868, and I have

(Testimony of John B. Catlin.)

seen that land surveyed, and I know considerable about it.

Q. Had Mr. Cobban or Mr. Dinsmore said anything to you prior to the first of March, about their plans for buying lands in the Blackfoot country?

A. No, sir, I think not.

Q. What is that? A. No, sir.

Q. Hadn't heard the subject mentioned?

A. No, sir.

Q. How soon after the first of March was it that you did hear the subject mentioned?

A. I would say that it must have been in May.

Q. Why do you say in May?

A. Well, I think it was about that time that—I cannot say positively when that subject was first mentioned.

Q. I hope you will not mention or say anything positive unless you do know it, Major. A moment ago you said it must have been in May. I wish you wouldn't say that unless you are positive about it.

A. I said I thought it was in May, did I not?

Q. Who did you first hear the subject mentioned by?

A. I cannot say positively.

Q. You cannot say that?

A. No, sir, not positively.

Q. Do you know Mr. H. W. McLaughlin?

A. I do.

Q. How long have you known him?

A. I have known Mr. McLaughlin for about, I would say, six or eight years, possibly longer.

(Testimony of John B. Catlin.)

Q. You saw him in the office of Cobban & Dinsmore in the spring of 1899, did you not?

A. I might have seen him in there; I won't be positive that I did, though.

Q. Did you not know of the negotiations that were going on between him, as the representative of the defendant in this case and Mr. Cobban?

By Mr. BICKFORD.—We object to that for the reason that it is not shown by any testimony given in this case that H. W. McLaughlin was the representative of the defendant in this case, and upon the further ground that it is not proper cross-examination of the witness. concerning any matter that was brought out in the examination in chief of the witness.

A. I did not.

Q. Did you never know of them?

A. I do not know it to-day.

Q. You never heard from either Mr. McLaughlin or Mr. Cobban, that such negotiations were had?

A. Never.

Q. And that, as the result of the negotiations that were so had, you were set to work as the clerk and agent and employee of Mr. Cobban—to obtain title to these lands? A. No, sir.

Q. But you know as a matter of fact do you not, that shortly after the first of March you were so set to work?

A. I couldn't say how soon after the first of March, but I know I did some work for Mr. Cobban in that line, yes, sir.

(Testimony of John B. Catlin.)

Q. When was this that you were first spoken to about it?

A. I haven't any knowledge when I was first spoken to about it.

Q. What was said to you by Mr. Cobban in regard to it?

A. I think the first thing that ever came up to me, was when Mr. Griswold went into Mr. Cobban's employ, when parties came in with a slip describing certain tracts of land, and naming the witnesses that were acquainted with the land, and signed by Mr. Griswold. I was instructed by Mr. Cobban, to fill out those blanks, and put in the names and the dates.

Q. Do you recall who the first of these parties was?

A. I do not.

Q. About when it was?

A. I do not. These parties, in nearly all cases, were strangers to me.

Q. How long after Mr. Griswold had entered the employ of Mr. Cobban was it that these parties commenced to come into the office?

A. I don't know when Mr. Griswold went into Mr. Cobban's employ.

Q. But you say it was after—some time after Mr. Griswold went into Cobban's employment, that these parties did come in?

A. I will say this that this is the first recollection I have now of any connection with that business.

Q. Now, with those slips of paper which were

(Testimony of John B. Catlin.)

handed to you by these strangers, containing the description of the land, and the witnesses, signed by Mr. Griswold, would that afford you sufficient data to make out the blanks? A. Yes, sir.

Q. What else would these papers have, if anything else, on them, besides the description and the four witnesses, and Mr. Griswold's name?

A. Why Mr. Griswold—they would be addressed to either Mr. Cobban or myself, and would contain the name of the applicant, the tract of land that Mr. Griswould had examined, and that he wished them to file on, and he would mention the names of four witnesses that were familiar with the land, and his name would be signed with the request that they be put on for publication.

Q. And with the request that they be put in for publication? A. Yes, sir.

Q. And on receipt of this slip of paper from these strangers, what would you do?

A. I would make out their application to purchase this land under the Stone and Timber Act, and they went to the office and filed and made their applications.

Q. Did you go with them?

A. Sometimes I did, and other times I didn't.

Q. Nothing would be required at that time except to file the application which you had made out in your office? A. That was all, yes, sir.

Q. No money was paid? A. No, sir.

Q. And, as I understood you, the next step would be

(Testimony of John B. Catlin.)

the examination by you to see if it was correct, that is, the notices of publication?

A. After their papers were filed and they were put in for publication, if they found the land was vacant and they were put in for publication, I would refer to a copy of the paper in the office, and compare it with the description of land which Mr. Griswold had furnished, to see if there was any mistake. Very often they will make a mistake when they send up the notice for publication. If there was a mistake, I would go to the office and correct it.

Q. What papers were these published in?

A. Well, they were published in different papers. The greater portion of them were published in the "Missoulian," for the land that was in the Missoula Land District, and the "Garnet News," being the paper nearest to some of the land on the Blackfoot—in fact, I think that all of the land that these parties acquired title to in the Helena district, the notices were published in the "Garnet Mining News."

Q. In the "Garnet Mining News?"

A. In the "Garnet Mining News," yes, sir.

Q. And so, if you discovered any mistake in the notices which were published, you would make the correction, would you? A. Yes ,sir.

Q. That is, of those that were published in the "Missoulian"? A. Yes, sir.

Q. How about the "Garnet Mining News"?

A. I would correspond with them and notify them.

(Testimony of John B. Catlin.)

Q. Of the mistakes that you had noticed in the publication?

A. Yes, sir. Oftentimes sent them a corrected copy of the notice, as it should be, giving them a proper description of the land.

Q. The mistakes you most frequently noticed, I suppose, were in the description of the land?

A. Yes, sir; that is where the mistakes were.

Q. Did you notice also as to the accuracy of the publication of the names that Mr. Griswold had sent in by the slips? A. Yes, sir.

Q. And, if you noticed any mistakes in the spelling, you would correct that, I suppose?

A. I would if I found any mistakes, and in case they escaped us, when they made their proof, they could call the attention of the land officers to it when they made their proof, and they would correct it; they would correct any errors in the spelling of their names.

Q. How long, Major, would it be required to do this business—was it necessary with these strangers from the time they came into your office and presented these slips of paper from Mr. Griswold, up to the time of their completing their work at the first filing, at the time of their filing in the land office?

A. Well, there were two sets of blanks that had to be made out in duplicate. I think I could make the whole outfit out in five minutes.

Q. In five minutes? A. Yes, sir.

(Testimony of John B. Catlin.)

Q. That is, the application blank had to be made out in duplicate? A. Yes, sir.

Q. In order to be transmitted to Washington, it was necessary to make it out in duplicate, was it?

A. That was the requirement, and these papers were all submitted to the land office; one was retained in that office, and the other, I suppose, was forwarded to the department, and are in the general land office, now, I suppose.

Q. I just inquired for information. So that if you could do all the work that was required in five or ten minutes, in your office, then all the rest of the time that would be consumed, would be in walking with these entrymen from your office to the land office, and seeing that the paper was filed?

A. Well, if these people knew the location of the land office, and didn't request, I didn't pay any more attention to it; I let them go and make their filing.

Q. Well, I am assuming in cases where you did go with them?

A. Well, it took only a few minutes time.

Q. So, that as a matter of fact, when they left you, they were just as much strangers to you as when they came to you?

A. Yes, sir, there are a great many of these people, and if they were in this court room, I wouldn't know them.

Q. And in the due and regular course of business, you wouldn't have any occasion to see them at any time again, would you?

(Testimony of John B. Catlin.)

A. No, not in a great many instances. Of course I would see them if I came with them into the land office where they made their proof, I would see them again then.

Q. Yes, I mean there would be no particular occasion for the service of yourself at the time of the making of the final proof, would there? A. No, sir.

Q. That was a matter which rested entirely between the entrymen and his witnesses, and the officers of the land office? A. Yes, sir.

Q. But in any event there would be nothing that you would have occasion to see them for again in the next sixty days that intervened between the filing and the making of the final proofs?

A. Nothing that I know of. I might have seen some of them, but there was no reason why I should.

Q. Well, now, as a matter of fact, did you go to the land office with these entrymen and entrywomen at the time of their making their final proof?

A. I did in some instances.

Q. What would you say as to whether or not it was in a majority of the instances, the cases where you had made out their blanks in the first instance, in the first case?

A. I am inclined to think it was the majority of cases that I accompanied them.

Q. Well, when you accompanied them to the land office at the time of their making their final proof, what business did you have?

(Testimony of John B. Catlin.)

A. I had none whatever; I was a spectator. I stood and saw these papers, may be the officers of the land office, filled them out, they made the papers out without any suggestions from me, and I had nothing to do whatever.

Q. Why, then, did you go?

A. I went by request, as a general thing. These people came in from the country, and they wouldn't know whether they were going into the land office, or into a real estate office.

Q. Well, it was the same place that they had been in sixty days before, wasn't it?

A. Yes, they had been in there before.

Q. Well, if they had been in there before, why did you say they didn't know where to go?

A. Well, I don't say that they didn't know where to go. I said that I went by request.

Q. By the request of the entrymen?

A. Yes, sir.

Q. And at the request of the entrywomen?

A. Yes, sir.

Q. And anybody else's request? A. No, sir.

Q. Well, you simply went there as a spectator with nothing to do?

A. I went there with nothing to do. If they wanted any advice, I gave it to them. Though I didn't go inside the rail; the business was transacted over the counter, and if they asked me for any instructions, I gave it to them.

(Testimony of John B. Catlin.)

Q. Well, state generally, Major, what the general nature of the business was at that time?

A. Well, an applicant for a piece of land would go in and would present their application to the register or receiver of the land office. He would simply bring down his plats and docket and books.

Q. No, no, I didn't ask for that; you misunderstood me. I mean at the time of making the final proofs. You don't mean then, do you, that—at the time of making the final proofs?

A. No, I was speaking in regard to the entries.

Q. No, I had passed that. I am just asking you now, Major, as to what course the purchaser—what occurred first at the time of making final proof?

A. Oh, I understand you now. Well, either the register—

Q. I mean at the time when you went with the entrymen; what was done?

A. Why the witnesses and claimant were sworn, and they were asked the usual list of questions that are on the blank, on which timber and stone final proof is made, under oath, and signed by them.

Q. How long would that take?

A. Oh, I couldn't say. It would probably take—you understand that there was but two witnesses used; there would be four advertised, and there would be two witnesses and the claimant sworn.

Q. Yes, sir, and there would be the filling up of the blanks. A. Yes, sir.

(Testimony of John B. Catlin.)

Q. Well, how long would that take, as a rule?

A. Well, that would take twenty or thirty minutes.

Q. That is from the time you went into the land office with the entryman and his two witnesses, you think that twenty or thirty minutes would elapse from that time until you were prepared to go out?

A. Yes, sir.

Q. Were you in the habit of going behind the rail at that time, or did the entrymen?

A. No, I did not, either. I was familiar with the office. I had done so at different times, and helped myself to a set of blanks or a plat. I would get a plat down and look at it on the counter, and go outside of the rail and examine it. I have done that. That even isn't allowed now, but it was a custom at that time.

Q. But would the entryman and his witnesses remain standing on the outside of the rail, or at the rail while these blanks were being filled out?

A. No, not in a great many instances; they usually went in and were seated.

Q. Well, who usually filled out the blanks?

A. Well, Mr. Hershey, the receiver—the register, and Mr. Ranpt, sometimes, the receiver. I would say that in the majority of cases Mr. Hershey did that work. Mr. Ranpt was engaged at other work, and was very often out.

Q. Then, after these blanks had been filled out by the register or receiver, in the absence of the register, and the money was paid in and the receiver's receipts in

(Testimony of John B. Catlin.)

duplicate issued, was there anything more to be done?

A. Nothing, nothing that I know of.

Q. Well, at this time was there money paid in as land office fees? A. Yes, sir.

Q. What is that?

A. Yes, sir.

Q. How much would that be?

A. The fee for writing the testimony would be twenty-two and one-half cents for a hundred words.

Q. And ten dollars?

A. Ten dollars application fee, and two dollars and a half per acre for the land.

Q. Ten dollars application fee, and what did you say?

A. Two dollars and fifty cents, the purchase price of the land; two dollars and fifty cents per acre.

Q. Why sure; and the register's fee would be ten dollars, and the fee of twenty-two and one-half cents per folio for writing it?

A. Yes, sir, the application fee would be ten dollars. There was no register's fee.

Q. And the application fee would be ten dollars, you say?

A. Yes, sir, the application fee would be ten dollars.

Q. What would the folios amount to?

A. Well, it was twenty-two and a half cents a folio, per hundred written words.

Q. How much?

(Testimony of John B. Catlin.)

A. Twenty-two and one-half cents for each one hundred words.

Q. Well, how many hundred words would it require?

A. The testimony fee usually came to about ninety cents in each case.

Q. That is, I suppose, it depended on the length of the answers?

A. Yes; where the answers were yes and no, it didn't amount to much, but where they tried to make an explanation, it amounted to a little more.

Q. So that it took from ninety cents to how much?

A. Yes, I have seen them as low as ninety cents, and I have never seen them more than a dollar and a half.

Q. So that there would be eleven dollars that you would figure on paying into the land office for the fee, at the time of making the final proofs?

A. Yes, sir.

Q. In addition to the two dollars and fifty cents per acre? A. Yes, sir.

Q. Well, now, then, the receiver wouldn't issue his final receipt until he was satisfied that the publication required by law had been made, would he?

A. That publication was brought in by the parties when they came to make their final proofs; that is, in the case of the publications by the "Missoulian." It would be furnished directly from the office, from the paper, in some instances, if not all.

Q. It would be present in the office at the time?

(Testimony of John B. Catlin.)

A. Yes, sir, with the affidavit of the publication attached.

Q. Who secured that affidavit and paid the fees to the publishers? A. Who secured it?

Q. Yes, did you?

A. In some instances, yes.

Q. In other words, your work consisted in seeing that the proof was corrected and seeing that the description was accurate, and the names of the witnesses were rightly spelled, and that was all that you had to do, wasn't it?

A. Well, I don't recall what else I had to do with it.

Q. Well, that was all simply preliminary to securing the notice which is for use at the time of the final proofs? A. Yes, sir.

Q. Was it not?

A. Knowing that that had to be furnished, because without that they couldn't go on with their proof, and in a great many instances, parties were notified to go to the office themselves and pay for the publication, and themselves bring it with them to the office, for the purpose of making final proof.

Q. How do you know that?

A. How do I know it?

Q. Yes, sir.

A. Why it came in under my observation.

Q. How did it come in under your observation?

A. How did it come in under my observation? I saw it.

(Testimony of John B. Catlin.)

Q. You saw what?

A. I saw people go to the printer's office as requested, and get their notices, and bring them to the land office, and there submit it.

Q. Who did you see?

A. Well, I couldn't just call the names of the parties; I saw it a great many times.

Q. Name five persons that you ever saw go to a newspaper office for that purpose, that are named in this bill of complaint?

A. I will not attempt it, sir.

Q. Name one, then?

A. I will not attempt it.

Q. Tell me by what means you know that they were told to go to the printer's office?

A. I told them myself, and I know they brought it in; and I take it for granted they went there and did as I told them.

Q. Name one person that you told to go to the printer's office, and that you know did go to the printer's office, and pay these fees.

A. I will not undertake to name one.

Q. Why won't you undertake to name one?

A. Because I cannot tell you. My memory is not such that I would rely upon it to name these people. There was a number of these people doing business there, and I cannot say which ones.

Q. Well, now, is it not true, Major Catlin, that in each and every case where you made out the copy for

the printer from data which you had received from Mr. Griswold, setting forth the name of the applicant, or of the entryman, and the description of the lands, and the names of the proposed witnesses, which copy, after it was published in the newspaper, you examined for the purpose of correcting it, and did correct it? It is not true that in each and every one of these cases you paid in the interest of Mr. Cobban, the money which the publishers required for the printing?

By Mr. WALSH.—We object to that for the reason that it is immaterial and irrelevant, and it is not proper cross-examination.

A. I couldn't say as to that.

Q. You couldn't say as to that? Have you no memory upon that subject?

A. I have a memory, but then it isn't perfect.

Q. You have now no present memory of having paid money to the publishers, have you? A. I have.

Q. And the number of times? A. Yes, sir.

Q. Do you know who had made arrangements with the publisher for these publications?

A. In some instances I may have myself.

Q. What was that arrangement?

A. The arrangement was—they were taken in there and put in publications.

Q. What was said as to who would pay for them?

A. Not one word said, except for the notice to be run the time required. They have never exacted any-

(Testimony of John B. Catlin.)

thing or asked any man for pay until you call for that affidavit, that was published, and then was the time for them to make a demand for their money.

Q. And how many times did you call at the printer's office for the purpose of securing the affidavit of publication?

A. Oh, I haven't any idea of the number of times.

Q. What is that, a number of times?

A. Yes, sir, a number of times; I haven't any idea how many.

Q. Well, when you say a number of times, aren't you willing to give us any specific number, so that we can have some knowledge or idea as to what you mean by a number of times?

A. I will, as far as I can.

Q. Well, will you say it was ten times?

A. Yes, and more.

Q. Would you say that it was twenty times?

A. I wouldn't say that it was twenty.

Q. What is that?

A. I wouldn't say that it was twenty times.

Q. You will say that it was more than ten times and that it might have been twenty?

A. Possibly, yes, sir.

Q. You had not ever been there fifty times, had you?

A. No, sir, I don't think so.

Q. You don't think so?

A. No, sir, I stated that I did not know.

Q. So that the amount of times—you mean by that

(Testimony of John B. Catlin.)

that it might have been fifty, and you are not willing to swear that it was not fifty?

A. I am not willing to swear or to make any statement as to the exact number of times, for I don't know.

Q. Well, now, then, when this money was paid by you more than ten times, and it might have been fifty times, whose money was it?

A. It was the entryman's money.

Q. Who did you receive the money from?

A. Mr. Cobban, money loaned to the entrymen; in some instances I received it directly from the parties themselves.

Q. If you received the money that you paid into the publisher's office from Mr. Cobban, how are you now able to swear that it was the entryman's money?

A. Mr. Cobban gave this money to me to pay in there as he had loaned it to those parties, and I complied with his instructions.

Q. Do you know anything about the question as to who owned this money that you saw paid into the publisher's office, and—except as Mr. Cobban had told you?

A. I do not.

Q. So that the entire foundation for your sworn testimony that it was Mr. Cobban's money—the entryman's money that you paid into the publisher's office, although you received it from Cobban, was simply what Mr. Cobban had told you?

A. Mr. Cobban was the man that was handling the

(Testimony of John B. Catlin.)

money; he was the man that handed it to me, and I paid it in there.

Q. Yes, of course, this money that was paid into the publisher's office that you received from Cobban, was before the final proofs?

A. It was at the same time, or before, you may say, it was sometimes an hour or two before, and sometimes on the eve of making the final proof.

Q. But be that as it may, Major, the work of taking the proofs could not commence legally until the register had in his possession the affidavit of the publication of the notice? A. Yes, sir, they could.

Q. He could?

A. Yes, sir, and it was done and is done in all land cases that I ever visited, with the understanding that they will be furnished. The receipt cannot issue until that is done, but the testimony can be taken.

Q. Well, that amounts in substance to the same thing, does it not? A. No.

Q. If the information is furnished to the receiver, or the register of the land office, when the publication has been made? A. Oh, yes.

Q. And that it will be furnished at once, although you might not at that time immediately, have it in your possession.

A. Well, that is what I understood your question. If that is your question, that is right.

Q. So that if the register or the receiver begins the work of taking final proofs without the presence of the

(Testimony of John B. Catlin.)

receipt of the publisher, it is solely because he believes that it will be furnished? A. That is it.

Q. The representatives of the entryman, or his attorney, if the publication has been had, and that the receipt will be immediately furnished before receipt issues?

A. The register or the receiver are aware of the fact that notices have been sent to the office, because they send them out from that office, and it isn't sent out by the applicant or any attorney for him, however, on the outside.

Q. So, then, the money so advanced by Mr. Cobban, and paid into the land office for the publication of this notice, was without any security whatever which had been given him, on the theory that he was to receive his pay when the entry had been made, and after the receipt had been issued and received?

A. I think I said because there was a memorandum and a receipt for this money.

Q. A memorandum and a receipt for the money?

A. A memorandum and a receipt for this money. There was no security, of course.

Q. No security of any kind?

A. No, sir, none whatever.

Q. But a receipt that so much money had been advanced to the entryman for his benefit?

A. Well, I wouldn't word it that way.

Q. How would you word it?

(Testimony of John B. Catlin.)

A. Received of R. M. Cobban, ten dollars, or fifteen dollars, or twenty dollars, whatever it may be, to show that Mr. Cobban had loaned him the money. It was a very short memorandum, and we invariably used it.

Q. What was that for?

A. To have something to show what money they had received.

Q. And what was that to pay for?

A. What was that to pay for?

Q. Yes. A. Why, to pay for this notice.

Q. Very well. That is to pay for the publisher's notice? A. Yes, sir.

Q. Well, then, after the publication—after the affidavit of publication had been furnished to the register and receiver, it had—and they had taken the proofs, as a condition precedent to the delivery of the receiver's duplicate final receipt, he would require the payment of his fees, would he not?

A. Yes, sir. After they had perfected the proof, that is after it was all written up and the affidavit signed, the amount required to complete that would be figured up by the register and receiver, as the case might be, and the money would be paid and the receipt follow at once.

Q. Well, there would be at least eleven dollars more than would have to be advanced by Mr. Cobban?

A. I don't understand you, sir.

Q. Why, I say you have accounted for the money that was advanced by Mr. Cobban to pay the printer?

(Testimony of John B. Catlin.)

A. Yes, sir.

Q. Now, the same thing is true of the money that would be required to be advanced by him to pay the register and receiver? A. Yes, sir.

Q. Is that not so?

A. Yes, sir. And also the purchase price of the land would be added right there and collected right there.

Q. Well, so that there would be eleven dollars there, and how much would the printing of the notice be?

A. I think as a rule about eight dollars.

Q. About eight dollars? A. Yes, sir.

Q. Well, that would be nineteen dollars.

A. Well, I don't know but what in some instances more than that. I don't recollect what the "Garnet News" charged.

Q. Well, would you take any receipt from the entryman for that—saying, "Received from R. M. Cobban, eleven dollars to pay the register and receiver's fee, as a loan"? A. No, sir; we would not.

Q. So that you would only have one receipt.

A. We would have one receipt.

Q. And that was from the printer?

A. That would go to the office—they would go to the office of Mr. Cobban, and give security on the whole amount.

Q. Yes, and the whole amount would be what?

A. The whole amount would be about four hundred and twenty dollars. It would be four hundred dollars

(Testimony of John B. Catlin.)

for the land, in case it was a hundred and sixty acres, and it would be about eight or ten dollars for publisher's fee, as the case might be, and then about eleven dollars, whatever the application and the testimony would be—the written testimony.

Q. Would that include all of the costs?

A. I think it would.

Q. Then you would immediately repair to the office to obtain security on the entire amount?

A. Oh, no, not immediately; we would generally fix it up the same day. We did not always do that; we would sometimes let it run along several days perhaps, where we knew we were all right. We didn't hurry them up to give any security on it, when we knew they were all right.

Q. Well, now, how many cases Mr. Catlin, in addition to taking the money from Mr. Cobban, for the purpose of paying for the publication of the notice, and paying the register and receiver, did you also pay this money—did you use this money for the purpose of paying for the land?

A. We did in some instances, and in some instances we didn't use any of his money.

Q. Well, how many cases do you recall where you used his money for the purpose of paying for the land?

A. Oh, I couldn't give you any idea.

Q. Could give no idea? A. No, sir.

Q. My brother has particularly called your attention to the names of the entrymen and entrywomen that are

(Testimony of John B. Catlin.)

named in the bill of complaint, and you have answered—therefore I have assumed that you are familiar with the names of the entrymen and entrywomen that are named in the bill of complaint, is that so?

A. Well, I cannot say that I—I cannot tell the number of these people that Mr. Cobban furnished money for. I can tell the number of people that he furnished the money for through me.

Q. You don't know how many?

A. No; I do not.

Q. Can you name or do you know of any entryman or entrywoman that is named in this bill of complaint that I hold in my hand, paid for their land from money that they received from any other source than from Mr. Cobban?

By Mr. BICKFORD.—We object to the question for the reason that the printed bill of complaint referred to by counsel, seems to be a secret sort of a document and one that has not been generally distributed, only one copy of it has ever been seen in the courtroom to my knowledge, and it is unfair to the witness to ask the witness concerning a fact that he does not remember, and to ask him concerning a paper that has not been shown to the witness, or that he has ever seen, or has any knowledge about, and it not being shown that the printed bill of complaint referred to by counsel is a complete copy of the bill of complaint filed in this case and upon which the action was founded.

By Mr. MAYNARD.—I would say in reply to the objection of my brother, that upon receiving some printed

(Testimony of John B. Catlin.)

copies of the bill of complaint in this case from Washington, I was in Helena at the time, and handed my brother Walsh, who is here, and one of the counsel for the defendant, one of them, and that was months ago, and I have had one and he has had one. Comparatively a short time ago I received some extra copies from Washington, and the copy that I have is a printed copy, precisely the same as the printed copy which I furnished the counsel on the other side.

By Mr. BICKFORD.—So far as the intimation goes that he has furnished counsel on the other side with a copy of the bill of complaint to which he refers, applies to myself, I want to say that such reference has no application to me.

By Mr. MAYNARD.—Well, I think that I gave brother Walsh two copies at the time I refer to.

By the EXAMINER.—Can you answer, Major?

A. I cannot, for I am not familiar with that complaint, and do not know the names of the parties that are mentioned in it.

Q. Very well. Do you know Charles Cloutier, of Clearwater, Montana?

A. I have met him, I presume, but I wouldn't know him if he was sitting in this room to-day. The name is familiar, though.

Q. What is that?

A. I say the name is familiar, though.

Q. What have you to say as to whether or not you made out this application, Major?

(Testimony of John B. Catlin.)

A. I cannot tell you; I don't remember.

Q. Have you any recollection of being with him at the itme of the final proof?

A. I cannot tell you, as long as I cannot locate the man.

Q. Can't you locate him?

A. No, sir. I say that I cannot locate him or recollect him at all. If I could, I could probably answer that, but I cannot without I can recall him.

Q. You have no recollection of any kind in regard to this entryman? A. None whatever.

Q. You don't know who he is?

A. I know who he is; I know of him; I have heard the name, but if there was two men stepping in that room, and I had heard of him, I could not pick him out. If he was a big man or a little man, I couldn't do it. I have no recollection of him whatever.

Q. Do you know anything about him at all?

A. No, the name is familiar, and that is all; that is all I know about him.

Q. What I mean by that is, you have no knowledge about the man, where he lives or what he does.

A. I don't know where he lives; no, sir.

Q. You don't know where he lives?

A. No, sir; I do not.

Q. Or what he does or anything about him?

A. No, sir; I do not.

Q. Well, do you know anything about John Gillies?

A. Yes, sir; I do.

(Testimony of John B. Catlin.)

Q. What do you know about him?

A. I know when I first saw him; I know I met John Gillies at the Clearwater. At the junction of the Clearwater and the Blackfoot river. He had a stopping place there and a hotel, and at that time I think he was cooking there.

Q. You think he was cooking there?

A. Yes, sir.

Q. He was cooking for Mr. Griswold, was he not?

A. I think so; yes, sir.

Q. That place was kept by him, wasn't it?

A. Yes, Mr. Griswold sold that property, but I think it was after I had met this man, this man that was cooking for Mr. Griswold, when he was cooking for Mr. Griswold.

Q. You say this Mr. Gillies was cooking at the time for Mr. Griswold?

A. I think Mr. Griswold owned the place at that time. I stopped there and I know that he was cooking.

Q. You mean that John Gillies was cooking, do you?

A. Yes, sir.

Q. Was that the first time that you ever met Mr. Gillies?

A. That is the first time that I have any recollection of it. I may have met him, though, I wouldn't say.

Q. Do you recollect of meeting him afterwards?

A. I cannot say as to that.

Q. You cannot say whether you have any knowledge about him or not?

(Testimony of John B. Catlin.)

A. Yes; I have a knowledge about him; I have a very vivid recollection of meeting Mr. Gillies; I knew he was a cook, and I know he was drunk at the time, and I remember of meeting him, and of him making an impression on me, very distinctly.

Q. How many times were you there at the Clearwater?

A. I think I was at the Clearwater three times. I went up there twice looking for land, and I passed there once on a hunting trip, an excursion up to Ovando.

Q. On a hunting trip?

A. Yes, sir; and possibly—yes, I was there another time I recollect that. I have been there at least four times.

Q. You have been there four times at least?

A. Yes, sir.

Q. Well, do you know where this drunken cook got money enough to buy a hundred and sixty acres of land to convey to your chief, Mr. Cobban?

A. No, sir; I do not.

Q. You had nothing to do with that, did you?

A. No, sir.

Q. You have no recollection of his being in Helena or of his conveying to Cobban? A. I have not.

Q. Very well. Do you know Edward B. Doney and his wife, Martha M. J. Doney, of Ovando?

A. I may know them.

Q. Have you ever met them?

A. Yes; I think I have.

Q. Where did you meet them?

(Testimony of John B. Catlin.)

A. I won't be positive that I have met them, but I think I met them at Helena.

Q. Where did you meet them at Helena?

A. At the land office, I believe; I won't be positive about that, though; I wouldn't be sure.

Q. Well, have you no recollection on that subject at all Major? A. No, sir; I have not.

Q. You are not prepared to say that you know anything about those entries, are you?

A. No; I am not.

Q. Well, now, what about this one—here is one that you do know—Mr. Thomas Pelkey.

A. Yes, I have known Thomas Pelkey a good many years.

Q. You assisted him in getting this land for your chief, Mr. Cobban, did you not? A. No, sir; I did not.

Q. You did not? A. No, sir.

Q. What is Mr. Pelkey's business?

A. Well, I really don't know; I have met him a good many times, and I think his parents resided, and possibly do now, in Missoula.

Q. What is that?

A. I think he has lived in Butte here, and he has a brother that is a printer and running a paper over here—either here or in Helena, I don't know which.

Q. Well, what—you say you have known Thomas Pelkey for some years?

A. Yes, sir; I think I have.

Q. What has he been doing?

(Testimony of John B. Catlin.)

A. Well, I don't know what he has been doing. I know him, though, just the same as I do lots of young men?

Q. How old a man was he in 1899?

A. I am inclined to think I am in error as to knowing this man, Thomas Pelkey. I had Thomas Pelkey in my mind. Thomas Pelkey may not be of the same family, he may not be the man that I had in my mind, but the name is familiar, all right—Thomas Pelkey.

By Mr. BICKFORD.—You are thinking of Old Tom, who got killed jumping off the train. He jumped off the train just east of the Rattlesnake, and got killed. Don't you remember that?

A. No; I don't remember that.

By the EXAMINER.—You will not be through with this witness for some time, Mr. Maynard, will you?

By Mr. MAYNARD.—No.

By the EXAMINER.—We will take a recess, then, until two o'clock this afternoon.

Wednesday, April 23d, ten o'clock A. M.

Hearing resumed pursuant to adjournment. The witness JOHN B. CATLIN, called for further cross-examination.

Q. When we adjourned last evening, Major, we were considering the circumstances of the entries made by John B. Reeve and his family. During the night, have you refreshed your recollection in regard to those claims?

(Testimony of John B. Catlin.)

A. I have not.

Q. Well, do you know who had charge of their business from the time that they filed?

A. I believe I stated that I made out their applications and filing papers. I would like to state that I am a little hoarse and may have some difficulty in making myself understood. I had charge, I think, of making their application papers out. There was really no one in charge of it, except as I have stated, to see that everything was all right, and that the notices were published and everything correct, for the period of ten weeks.

Q. What is that?

A. I say to see that these notices were published for a period of about ten weeks, and as I say, there was no further interest in it taken by anybody, in the way of taking charge of them or anything of that kind.

Q. And whatever was necessary to be done, you did?

A. I did; yes, sir.

Q. You knew nothing of the arrangements that had been made for money to pay for these lands?

A. I did not.

Q. Now, when you made out the statements, you knew that they were to get their money from Mr Cobban, did you not? A. I did not.

Q. When did you first learn that?

A. I would say that if I learned it at all, I learned it at the time they made their proof. I am not positive at the present time, if they got their money from Mr. Cobban. I only saw them at the land office, as I re-

(Testimony of John B. Catlin.)

member. I never saw them get any money from Cobban.

Q. Did you know of the fact that when the notice was published for them to make their final proof, that Mr. Cobban was not in town, and that they couldn't get their money?

A. I don't recollect anything of the kind, no, sir.

Q. You knew nothing of that?

A. Possibly I did, but I don't recollect it.

Q. When did you first become acquainted with Albert Jemison?

A. I would say some time in May or June, 1899.

Q. Where? A. In Mr. Cobban's office.

Q. Do you know who introduced you?

A. I do not.

Q. Did you ever learn that he was working for Mr. Cobban?

A. I understood that we was working for Mr. Griswold. I couldn't say who employed him; I couldn't say whether Mr. Griswold employed him or Mr. Cobban.

Q. What was he doing for Mr. Griswold?

A. I never saw him at work, but I supposed he was assisting him in estimating timber on timber claims.

Q. Finding suitable locations?

A. Yes, sir.

Q. Do you know of the fact of Mr. Jemison, in his capacity of assistant to Mr. Griswold, locating certain people on these lands?

(Testimony of John B. Catlin.)

A. I couldn't recall any particular persons that he ever located. But I think, though, that was my understanding of it, that that was what he was doing.

Q. Well, refreshing your recollection on that, state, Major, if you know, as a matter of fact, you received slips of paper from Jemison, upon which the name of the proposed entryman was written, and the description of the lands, and the witnesses, as well as from Mr. Griswold? A. Yes, sir.

Q. Signed by Mr. Jemison?

A. I think so, yes, sir.

Q. And you took the same course with the papers received from Mr. Jemison as those which you received from Mr. Griswold? A. Yes sir.

Q. And when the person bearing these slips came into your office, you would fill out the filing blanks and go with them to the land office, if you thought that it was necessary? A. Yes, sir.

Q. And attend to the publication of the notices, and correct them in the same way that you did with the Griswold people? A. Yes, sir.

Q. How many of these blanks did you fill out from the papers handed to you by these entrymen, signed by Mr. Jemison? A. I have no idea.

Q. Well, what is your best recollection on the subject, Major, how many would you say?

A. Oh, I couldn't say with any accuracy, anything about the number. I am willing to say that there was

(Testimony of John B. Catlin.)

a number of them. How many from Mr. Griswold, or how any from Mr. Jemison, either, I couldn't say.

Q. Might have been ten or fifteen, I suppose?

A. I presume there was, yes, sir.

Q. Do you know Mr. E. R. Kilburn?

A. I do.

Q. I will ask you if during this season you did the same work on slips handed to you by these strangers, signed by Mr. Kilburn, as with Griswold and Albert Jemison? A I think I did

Q. You knew at that time that Mr. Kilburn was working for Mr. Griswold, did you not?

A. I knew he was in their employ; I knew he was either in the employ of Mr. Cobban or Mr. Griswold.

Q. Are you able to state as to how many blanks, and similar work, you did for entrymen that you received slips through Kilburn, for?

A I would say two or three.

Q. And those two or three, do you remember their names? A. I do, I remember two of them.

Q. What are their names?

A. One was Mrs. Catlin, my wife, and one was Mrs. Martha E. Wright, now Mrs. West.

Q. She lived at Stevensville at the time, did she?

A. Yes, sir.

Q. And lives there now, I suppose?

A. Yes, sir.

Q. I remember her very distinctly. Do you know Mrs. Kilburn, Effie M. Kilburn?

(Testimony of John B. Catlin.)

A. Yes, sir.

Q. Was she another one?

A. No, sir, I don't think I made out her application.

Q. And how about Mrs. Ehle? A. Mrs. Ehle?

Q. She was one of John B. Reeve's daughters?

A. I am inclined to think that I made her application, but I couldn't say who it was handed in by.

Q. Very well. Now, then, there is quite a number—it appears in the evidence that there were some seventeen relatives of Albert Jemison that made entries, and whose names appear in the bill of complaint. I will ask you if you knew them at all. Jacob F. Jemison, did you know him?

A. I knew a number of the Jemisons, but when it comes down to designating the particular ones, I cannot do it.

Q. And then there is Joshua C. Gilman, of Victor.

A. Yes, sir, I know him.

Q. You know him? A. Yes, sir.

Q. And he was one of the men that you did that work for?

A. I don't know, I wouldn't be positive; I presume I did, though.

Q. Well, he married one of the Jemison women, did he not? A. I don't know.

Q. He lives at Victor, does he?

A. He lives at Victor, yes, sir.

Q. And then there is George P. Jemison of Victor, do you know him?

(Testimony of John B. Catlin.)

A. Well, I wouldn't say whether I knew him or not. There is George P., I know George.

Q. And Albert G. Jemison, do you know him?

A. I cannot say.

Q. And Recy M. Jemison, do you know her?

A. No, sir.

Q. Charles H. Jemison and Zora Jemison, you have no knowledge of or acquaintance with any of these people?

A. I think that I have met all of those people, but couldn't distinguish them when it comes to the initials.

Q. Well, do you recall what particular facts and circumstances connected with any of these entries, of the Jemisons that I have called your attention to, other than the fact that you filled on their blanks and attended to their business, as you have stated?

A. Nothing further. I have a recollection of making out their applications, the filings for some of these people, but no other that I can recollect.

Q. Did you have anything to do with the Yarger entries? A. Yarger?

Q. Sarah Yarger, of Victor, and Calvin Yarger.

A. I think I made out their applications.

Q. Do you know whom they were located by?

A. I do not.

Q. But you attended to their business as you have stated, but had nothing whatever to do with the money part of the matter?

A. No, sir.